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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4633 OF 2019

New Pushpa Vilas Co-op. Hsg. Society Ltd. ..Petitioner.

V/s.

State of Maharashtra & Anr. ..Respondents.

Mr.M.A. Vaid I/b. Vaid Associates for the petitioner.

Mr.R.P.Kadam, AGP for respondent No.1.

Mr.Johnson John for respondent No.2.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 22, 2019

P.C. :-

Respondent No.2 initiated a dispute against the petitioner-society and sought recovery of an amount of Rs.2,94,216/- on the ground that since the society failed to discharge its obligation of maintenance, respondent No.2 has carried out the repairs. In the said dispute, the petitioner-society moved an application for mandatory directions to the respondent to deposit arrears of more than Rs.4 lakhs which application was

rejected by the Co-operative Court and confirmed in a revision. As such, this petition.

2. The submissions of learned counsel for the petitioner are, even when there is a remedy for recovery of amount of maintenance, considering the nature of dispute involved, it would be duty of the respondent member to deposit the amount of maintenance in the Co-operative Court. He would also urge that regular maintenance amount is not paid till this date.

3. Learned counsel for respondent No.2 submits that since the concurrent findings recorded by the Courts below, no interference is warranted. According to him, the respondent is making regular payment of maintainance and only an amount to the extent of Rs.2,94,000/- is withheld by the respondent.

4. Considered submissions.

5. In my opinion, the petition can be disposed of with following directions, particularly when respondent No.2 member of co-operative housing society is enjoying the common amenities and facilities of the society at the costs of other members, who are regularly paying the amount of maintenance:-

i) The petitioner-society shall raise a bill for arrears of

maintenance with interest on respondent No.2 within a period of two weeks from today;

- ii) Respondent No.2 shall deposit those arrears as demanded by the petitioner within a period of three months from the date of receipt of such demand, in the Co-operative Court;
- iii) Respondent No.2 shall continue to deposit the amount of regular maintenance, as is undertaken by him before this Court;
- iv) As regards withdrawal of the amount of arrears deposited by respondent No.2, the same is made subject to the final outcome of the dispute, being Dispute No.CC/II/53 of 2017 on the file of Co-operative Court;
- v) Both the petitioner and respondent No.2 assure that they will co-operative in expeditious disposal of the dispute.
- vi) The petition stands disposed in the aforesaid terms.

(NITIN W.SAMBRE, J.)