

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

WRIT PETITION NO. 13225 OF 2018

Mr. Rajkumar Pandit and anr.

...Petitioners

vs.

Shri. Krishna Complex D & E
Co-op. Hsg. Soc. Ltd. and ors.

...Respondents

Mr. Rajai T. Yadav for the Petitioner.
Mr. Atul S. Singh for Respondent No.1.
Mr. P.P.Pujari, AGP. for Respondent Nos. 2 and 3.

CORAM : C.V. BHADANG, J.
DATED : 17TH DECEMBER, 2019

PC:

1. Challenge in this petition is to the order dated 30.11.2016 passed by the 2nd respondent, granting recovery certificate under Section 101 of the Maharashtra Co-op. Societies Act, 1960. ("Act" for short). By the said recovery certificate, the first respondent has been held entitled to recover from the petitioners an amount of Rs.3,33,503/- along with interest at the rate of 21% from 1.5.2015 till realization. The said order has been confirmed by the 3rd respondent by his order dated 11.1.2018 under Section 154 of the Act.

2. Learned counsel for the petitioner has raised two contentions. Firstly it is submitted that the first respondent society was formed in the year 2012 while the petitioner had obtained the

possession of the flat in the year 2010. It is submitted that the maintenance charges/property taxes and all other recoverable dues were paid to the builder and developer from 2010 to 2012 and therefore, the 1st respondent cannot recover the said amount since prior to its constitution. Secondly, it is submitted that certain documents were asked for from the first respondent and as per the letter dated 10.2.2016 the first respondent had supplied certain documents as set out in Para 2 of the said letter. In particular, it is pointed out that, in Para 2 (f), the 1st respondent society has only supplied the statement showing the break up of monthly maintenance from April, 2014 and not from inception i.e. constitution of the society. Except this, there are no other contentions raised.

3. The learned counsel for the 1st respondent has supported the impugned order. It is submitted that none of these grounds as have been raised in this petition were raised in the reply filed by the petitioners before the learned Deputy Registrar. It is submitted that the said contention cannot be allowed to be raised for the first time before this court and in any event they involve disputed questions of fact.

4. I have considered the submissions made. A perusal of the statement at Page 99 of the compilation shows the break up of the

various charges recoverable which have been set out in respect of each of the flat holders. The said statement is pertaining to the dues as on 24.4.2012 (31.3.2012). The said statement gives the exact break up, such as maintenance charges, property tax, society formation charges, electricity, water meter charges and development charges etc. and also sets out the amount which has been received by the society. There is one more statement which is at Page 101 of the compilation which gives details of the maintenance upto March, 2012. It is contended on behalf of the petitioner that the maintenance charges etc. for the period from 2010 to 2012 were paid to builder and developer. No such case was made out in the proceedings for grant of recovery certificate. The petitioner has also not produced documents/receipts to show that any such amount was paid to the builder/developer. Thus, in my considered view the said contention cannot be accepted. Even so far as the reliance placed on letter dated 10.2.2016 is concerned, here again the society had given break up of the monthly maintenance from April, 2014. The break for the period prior there to is given as per statement which is at Pages 99 and 101 as referred to above.

It is well settled that the proceedings under Section 101 of the Act are summary for issuance of recovery certificate are

summary in nature. The order granting recovery certificate has been confirmed in revision application and this court in exercise of its extra ordinary and/or supervisory jurisdiction cannot go into the disputed questions of facts. The remedy of the petitioner, if any, lies else where. Thus, no case for interference is made out. Petition is accordingly dismissed with no order as to costs.

5. The petitioner had deposited 50% of the principal amount with the 1st respondent when the revision application was filed and remaining 50% of the principal amount has been deposited with this court on 20.12.2019. The amount deposited before this court, along with interest, if any, shall be paid to respondent No.1.

(C.V. BHADANG, J.)