

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1573 OF 2013
ALONGWITH
NOTICE OF MOTION (L) NO.269 OF 2013
IN
WRIT PETITION NO. 1573 OF 2013
ALONGWITH
WRIT PETITION NO. 1600 OF 2013
AND
NOTICE OF MOTION NO.234 OF 2014
IN
WRIT PETITION NO. 1600 OF 2013

Vishwas Pandurang Shinde,	)	
Flat No.102, 1st Floor, Manish Mahal	)	
Co-operative Housing Society Ltd.,	)	
Plot No.S-3, Off. Veera Desai Road,	)	
Andheri (W), Mumbai – 400 058	)	 Petitioner

VERSUS

- | | | |
|---|---|--|
| 1. Manish Mahal Co-operative Housing |) | |
| Society Ltd., Plot No.S-3, Off. Veera |) | |
| Desai Road, Andheri (W), |) | |
| Mumbai – 400 058 |) | |
| | | |
| 2. Manish Developers, |) | |
| A Partnership Firm having its Registered |) | |
| office at C/o. Vijayraj Building, |) | |
| Above Bhagwans Cut Piece, S.V.Road, |) | |
| Bandra (West), Mumbai 400 058 |) | |
| | | |
| 3. Tarabai Pandurang Shinde, |) | |
| | | |
| 4. Papa Pandurang Shinde, |) | |
| | | |
| 5. Yashubai Aba Kadam |) | |

Opp.Nos. 3 to 5, occupants of Temporary)
 Structure in Manish Mahal Co-operative)
 Housing Society Ltd., Plot No.S-3,)
 Off. Veera Desai Road, Andheri (W),)
 Mumbai – 400 053) Respondents

AND
NOTICE OF MOTION NO.272 OF 2013
IN
WRIT PETITION NO. 1573 OF 2013
AND
NOTICE OF MOTION NO.262 OF 2019
IN
WRIT PETITION NO. 1600 OF 2013

Manish Mahal Co-operative Housing)
 Society Ltd., Plot No.S-3, Off. Veera)
 Desai Road, Andheri (W),)
 Mumbai – 400 053) Disputant/
 Decree Holder

IN THE MATTER BETWEEN

Vishwas Pandurang Shinde,)
 Flat No.102, 1st Floor, Manish Mahal)
 Co-operative Housing Society Ltd.,)
 Plot No.S-3, Off. Veera Desai Road,)
 Andheri (W), Mumbai – 400 058) Petitioner

VERSUS

1. Manish Mahal Co-operative Housing)
 Society Ltd., Plot No.S-3, Off. Veera)
 Desai Road, Andheri (W),)
 Mumbai – 400 058)

2. Manish Developers,)
 A Partnership Firm having its Registered)
 office at C/o. Vijayraj Building,)
 Above Bhagwans Cut Piece, S.V.Road,)

Bandra (West), Mumbai 400 058)
3. Tarabai Pandurang Shinde,)
4. Papa Pandurang Shinde,)
5. Yashubai Aba Kadam)
Opp.Nos. 3 to 5, occupants of Temporary)
Structure in Manish Mahal Co-operative)
Housing Society Ltd., Plot No.S-3,)
Off. Veera Desai Road, Andheri (W),)
Mumbai – 400 053) Respondents

Mr. A.A.Siddique, i/b. M/s.A.A.Siddique & Associates for the Petitioner in Both the Writ Petitions and for the Applicants in NMWL/269/2013 and NMW/234/2014.

Dr.Kishan A. Khanna for the Respondent no.1 in both the writ petitions and for the Applicant in NMW/272/2019 and NMW/262/2019.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 8th JULY, 2019

PRONOUNCED ON : 25th JULY, 2019

JUDGMENT :

By Writ Petition No.1573 of 2013 filed by the petitioner (original opponent no.2) in the dispute filed by the respondent no.1, the petitioner has impugned the judgment and award dated 29th March,2012 passed by the learned IVth Co-operative Court, Mumbai allowing the dispute filed by the respondent no.1 and order dated 9th October,2012 passed by the Maharashtra State Co-operative Appellate Court, Mumbai dismissing the appeal filed by the petitioner.

2. By the said judgment and award dated 29th March,2012, the Co-operative Court directed the petitioner no.1 herein and respondent nos. 3 to 5 to quit, vacate and handover vacant and peaceful possession of the flat no.102 situated on the 1st floor of the building of the respondent no.1 society and further directed that after taking possession of the said flat from the petitioner and respondent nos. 3 to 5 may handover the possession thereof to the respondent no.1. The Co-operative Court also declared that the respondent no.1 (original disputant) is entitled to recover an amount of Rs.19,21,801/- along with interest at the rate of 6% per annum w.e.f. 1st January,2010 till realization.

3. Insofar as the order passed by the Maharashtra State Co-operative Appellate Court is concerned, by judgment dated 9th October,2012, the Co-operative Appellate Court dismissed the appeal filed by the petitioner and partly allowed the appeal filed by the respondent no.1 and confirmed the judgment of the Co-operative Court insofar as possession and arrears of maintenance is concerned. The Co-operative Appellate Court confirmed the judgment of the Co-operative Court dismissing the case so far as the possession sought as against the respondent nos. 3 to 5 is concerned. The Co-operative Appellate Court was pleased to set aside the judgment of the Co-

operative Court insofar as award at the rate of 6% per annum granted in favour of the respondent no.1 is concerned and enhanced the rate of interest at the rate of 9% per annum.

4. The petitioner had filed Notice of Motion (L) No.269 of 2013 in the Writ Petition No.1573 of 2013 *inter alia* praying for an order and direction against the respondent no.1 to furnish the official audit report from the period of 1986 till March 2013 with brief statement of charges levied to various occupants of the respondent no.1 society including commercial and residential as well as dues of the petitioner and other occupants. The respondent no.1 has filed Notice of Motion No.272 of 2019 in Writ Petition No.1573 of 2013 *inter alia* praying for dismissal of the Writ Petition No.1573 of 2013.

5. Insofar as Writ Petition No.1600 of 2013 is concerned, the petitioner has filed the said writ petition impugning the judgment and award dated 29th March,2012 passed by the Co-operative Court and order dated 9th October, 2012 passed by the Maharashtra State Co-operative Appellate Court allowing the appeal filed by the respondent no.1 partly. The petitioner has filed Notice of Motion No.234 of 2014 in Writ Petition No. 1600 of 2013 *inter alia* praying for modification of the order dated 17th October,2013 passed by this court granting

conditional stay of the execution of the award dated 29th March, 2012 passed by the Co-operative Court and confirmed by the Co-operative Appellate Court by extending the time to enable the petitioner to deposit 25% of the amount, for condonation of delay in filing notice of motion and for expeditious hearing of the said writ petition.

6. Notice of Motion No.262 of 2019 is filed by the respondent no.1 *inter alia* praying for dismissal of the Writ Petition No.1600 of 2013, with exemplary cost and seeking cost of Rs. 2 lacs and initiation of criminal contempt against the petitioner. By consent of parties, all the aforesaid proceedings were heard together and are being disposed of by a common order. Some of the relevant facts for the purpose of deciding these proceedings are as under :-

7. It is the case of the petitioner that the respondent no.2 was the developer who had entered into an agreement dated 23rd February, 1981 with the petitioner for providing permanent alternate accommodation free of cost. According to the petitioner, there was an understanding between the petitioner and the respondent no.2 that the petitioner will pay municipal taxes, water charges, electricity charges directly to the Municipal Corporation and/or to competent authority. The respondent no.2 allotted the flat bearing no.102 on the first floor in

the respondent no.1 society. It was the case of the respondent no.1 society that the petitioner was a persistent defaulter in respect of the dues of the respondent no.1 towards monthly outgoings, taxes, common amenities, water charges etc. and as on 31st December, 1985, the petitioner who was in arrears of amount of Rs.3,134.19.

8. The respondent no.1 through its advocate's notice dated 5th December, 1985 terminated the tenancy rights of the petitioner in respect of the said flat and called upon him to quit, vacate and handover peaceful possession of the said flat to the respondent no.1 society and also to pay Rs.2,304/- towards arrears within 15 days from the date of receipt of the said notice. Sometime in the month of January 1986, the respondent no.1 filed a dispute bearing Case No.179 of 1986 before the Co-operative Court against the petitioner herein and the respondent no.2 developers *inter alia* praying for a declaration that the tenancy rights of the petitioner in respect of the said flat was duly and validly terminated and for recovery of the possession of the said flat with payment of amount of Rs.3,134/- towards arrears and for other reliefs.

9. The respondent no.1 society filed a fresh dispute bearing no.382 of 1994 against the petitioner and respondent no.2 before the Co-

operative Court. The Co-operative Court passed an order dated 5th August, 1996 directing the petitioner to pay a sum of Rs.30,000/- for admitting the petitioner as a member of the society. The petitioner filed a written statement on the said dispute filed by the respondent no.1. On 14th January,2011, the Co-operative Court allowed the said dispute bearing no.382 of 1994 filed by the respondent no.1. The petitioner preferred an appeal before the Co-operative Appellate Court bearing no.89 of 2011. By an order dated 12th July, 2011, the Co-operative Appellate Court set aside the order dated 12th July, 2011 and remanded back the dispute to the Co-operative Court for fresh trial.

10. The respondent no.1 thereafter filed an affidavit in lieu of examination in chief before the Co-operative Court. On 29th March,2012, the Co-operative Court allowed the said dispute filed by the respondent no.1. The petitioner preferred an appeal bearing no.34 of 2012 against the said impugned order on 29th March,2012 before the Co-operative Appellate Court. The Co-operative Appellate Court passed an judgment and award dated 29th March,2012 and confirmed the order dated 9th October,2012 passed by the Co-operative Court. The Co-operative Appellate Court also allowed the appeal filed by the respondent no.1 society partly impugning the part of the impugned

order passed by the Co-operative Court insofar as rate of interest is concerned. The petitioner has thus impugned both these orders in these writ petitions.

11. Learned counsel appearing for the petitioner invited my attention to some of the annexures to this writ petition and submits that the Co-operative Court in the Dispute No.179 of 1986 had passed an order rejecting the said dispute for default and thus, the respondent no.1 could not have filed a fresh dispute for the same cause of action. The second dispute filed by the respondent no.1 was thus barred by *res-judicata*.

12. Learned counsel vehemently placed reliance on the Order 18 Rule 4 of the Code of Civil Procedure, 1908 and submits that though the matter was remanded back to the Co-operative Court by the Co-operative Appellate Court by an order dated 12th July, 2011 from the stage of evidence of the parties, the respondent no.1 society did not file any affidavit of evidence before the Co-operative Court. It is submitted that both the courts below considered the affidavit of documents filed by the respondent no.1 as affidavit in lieu of examination in chief contrary to the provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908. He submits that both the courts

below have erroneously held that the respondent no.1 society is a society of tenants and the respondent no.1 was the owner of the plot of land along with the structure standing on the plot of land.

13. It is submitted that though an opportunity was granted to the respondent no.1 to prove its case by leading proper evidence, respondent no.1 did not bother to lead proper evidence. The entire order thus passed by the Co-operative Court, allowing the dispute filed by the respondent no.1 is based on no evidence. In support of this submission, learned counsel for the petitioner invited my attention to the nine points for determination framed by the Co-operative Court. The Co-operative Court has rendered findings in respect of points for determination nos. 4, 5 and 7 in favour of the respondent no.1 and decided the points for determination nos. 2, 3, 6, 8 and 9 in favour of the petitioner.

14. Learned counsel for the petitioner invited my attention to some part of the cross-examination of the witness examined by the respondent no.1 and would submit that the petitioner had proved his case by cross examining the witness of the respondent no.1. It is submitted that since the respondent no.1 had failed to prove its case inspite of the opportunity granted by the Co-operative Appellate Court,

the petitioner was not required to enter the witness box and to lead oral evidence.

15. It is submitted by the learned counsel that though the respondent no.1 did not lead any evidence to prove the alleged arrears of outgoing and tax etc., the Co-operative Court has allowed the claim made by the respondent no.1 society. Insofar as the rate of interest awarded by the Co-operative Appellate Court at the rate of 9% per annum is concerned, he submits that no such interest could have been awarded by the Co-operative Court at the first instance and in any event could not have been enhanced from 6% to 9% by the Co-operative Appellate Court.

16. Dr.Khanna, learned counsel for the respondent no.1 society (original disputant) on the other hand submits that the society had already produced various documents in evidence in support of its case. After remand of the dispute by the Co-operative Appellate Court also, the respondent no.1 had filed an affidavit in lieu of examination in chief along with large number of documents through the witness examined by the respondent no.1 society. The said witness was also cross examined by the petitioner. The petitioner did not enter the witness box though onus of proof under 'point for determination' nos. 8

and 9 was on the petitioner. The petitioner also did not lead any evidence in rebuttal.

17. It is submitted by the learned counsel that both the courts below have rendered various findings of fact after considering the pleadings, documents and oral evidence led by the witness examined by the respondent no.1 and those findings being not perverse, cannot be interfered with by this court in this petition filed under Article 226 of the Constitution of India.

18. Insofar as the issue of *res-judicata* raised by the petitioner is concerned, it is submitted by the learned counsel for the respondent no.1 that the Co-operative Court rightly rejected the said plea of *res-judicata* raised by the petitioner on the ground that the previous dispute filed by the respondent no.1 against the petitioner and others was dismissed for default and was not decided on merit.

19. It is submitted by the learned counsel that the petitioner has made only part payment during the pendency of the proceedings towards arrears of dues demanded by the respondent no.1. Learned counsel appearing for the respondent no.1 submits that in the application for registration of the respondent no.1 society produced on record, the name of the petitioner was not even included in the list of

members. The petitioner had filed two written statements inconsistent with each other. The petitioner has suppressed filing of the first written statement before the Co-operative Court in the second written statement filed by the petitioner. The petitioner had made various admissions in favour of the respondent no.1 society in the first written statement. Even in the deed of conveyance executed in favour of the respondent no.1 society by the developer, the name of the petitioner was not mentioned. Learned counsel appearing for the respondent no.1 tendered a copy of the dispute filed for the first time which came to be dismissed for default.

20. It is submitted that both the petitions filed by the petitioner are totally frivolous and thus shall be dismissed with exemplary cost and with payment of various amounts mentioned in the notice of motion filed by the respondent no.1 society in both these writ petitions. This court shall also initiate criminal proceedings against the petitioner for the reasons setout in the notice of motion filed by the respondent no.1 in both the writ petitions.

21. Learned counsel for the petitioner in rejoinder placed reliance on sections 59 and 60 of the Indian Evidence Act and would submit that the evidence filed by the respondent no.1 was not in accordance with

those provisions and thus, such evidence could not have been considered by the co-operative court while allowing the dispute filed by the respondent no.1 society.

REASONS AND CONCLUSION

22. It is not in dispute that the petitioner claimed to be in possession of the said flat no.102 in the building of the respondent no.1 society under writing dated 23rd February,1981 alleged to have been entered into between the petitioner and the respondent no.1 developer. The name of the petitioner was not found in the application for registration of the respondent no.1 society or even in the deed of conveyance as a member.

23. Insofar as the dispute filed by the respondent no.1 being Dispute No.179 of 1986 before the Co-operative Court is concerned, the said dispute came to be dismissed for default and not on merits admittedly. The respondent no.1 filed a fresh dispute bearing no.382 of 1994 in the year 1994. In my view, since the Dispute Np.179 of 1986 came to be dismissed for default and not on merits, the question of the second dispute filed in the year 1994 being barred by *res judicata* did not arise. The Co-operative Court has rightly rejected the plea of *res judicata* raised by the petitioner in the impugned judgment and award.

24. Insofar as the main ground of challenge in the petition raised by the petitioner that no evidence was laid by the respondent no.1 though an opportunity was rendered by the Co-operative Appellate Court while setting aside the order passed by the Co-operative Court and remanding the matter back to the Co-operative Court to decide the matter afresh is concerned, I shall now refer to some of the orders and the documents forming part of the record.

25. A perusal of the judgment and award dated 14th January,2011 passed by the Co-operative Court indicates that the findings in favour of the respondent no.1 society including on the claim for monetary reliefs against the petitioner are rendered. The respondent no.1 society had filed affidavit of evidence. Even at that stage, the petitioner had filed a pursis stating that he did not want to lead any evidence. The petitioner however challenged the said judgment and award dated 14th January,2011 before the Co-operative Appellate Court. The Co-operative Appellate Court in the judgment dated 12th July, 2011 held that in the written statement filed by the petitioner, there were various admissions which were only pertaining to the possession of the petitioner as to whether legal or not. There were number of other aspects on which the evidence was required to be led by the respondent

no.1 society. It was held that there was no material on record on what basis the disputant claimed monthly maintenance charges of Rs.3,189.95 from the month of November 1994 onwards. The Co-operative Appellate Court held that there was no evidence adduced by the disputant under Order XVIII Rule 4 of the Code of Civil Procedure by filing examination in chief in support of the pleadings and therefore Co-operative Appellate Court was pleased to set aside the judgment and award dated 14th January,2011 and remanded back the dispute to the Co-operative Court for disposal according to law. The Co-operative Appellate Court directed to proceed the dispute from framing of issue i.e. from the stage of evidence from the parties.

26. A perusal of the record further indicates that pursuant to the said judgment dated 20th July, 2011 passed by the Co-operative Appellate Court thereby remanding the dispute back to the Co-operative Court, the respondent no.1 society filed an affidavit in lieu of examination in chief of Shri Raz Manva, the then Honorary Secretary of the respondent no.1 dated 20th August, 2011. In paragraph (1) of the said affidavit, it is mentioned that the said affidavit of evidence was filed in compliance with the order passed by the Co-operative Appellate Court dated 12th July, 2011. The said witness referred to and relied upon the

documents listed in annexure (1) which were already exhibited as Exs.11 to 48 by the Co-operative Court in view of the there being no objection from the petitioner.

27. A perusal of the record further indicates that the witness of the respondent no.1 society was cross examined by the petitioner's counsel. A perusal of the cross-examination clearly indicates that the petitioner had not even put a suggestion to the said witness that the computation of the amount of the alleged arrears of the society was not correct or that the petitioner was liable to pay the lesser amount to the respondent no.1 society. The petitioner did not choose to lead any oral evidence at all before the Co-operative Court.

28. The Co-operative Court rendered a judgment and award dated 29th March,2012 after remand of the matter by the Co-operative Appellate Court and after the respondent no.1 led oral and documentary evidence. The Co-operative Court framed nine issues. The Co-operative Court answered the points for determination 'whether the disputant proves that the disputant is entitled to claim relief in respect of prayer clause (c) of the dispute i.e. for an order and decree in the sum of Rs.1,18,645.86 towards monthly outgoing arrears with interest at the rate of 21% per annum in affirmative. The Co-operative

Court also answered the point for determination no.5 insofar as prayer clause (d) i.e. for an order and decree to pay monthly maintenance charges of Rs.1,310.05 per month regularly commencing from 1st November, 1994 along with any increases is concerned, in affirmative and in favour of the respondent no.1 society.

29. The Co-operative Court also granted injunction against the petitioner in respect of the said flat from creating any third party right or interest till handing over the possession thereof to the respondent no.1 society. The petitioner had denied the obligation to pay any maintenance charges to the respondent no.1 in toto. The witness examined by the respondent no.1 in his cross-examination stated that the society had offered membership to the petitioner but he refused to become the member and pay the outstanding. The Co-operative Court also considered the fact that the petitioner did not enter into the witness box and filed a pursis that he did not want to lead any evidence. Except the pleadings in the written statement, there was no evidence which showed that the petitioner had executed any agreement for sale in respect of flat no.102 in his favour though a suggestion was put to the witness by the respondent no.1 that the said flat was given to the petitioner free of cost and free of maintenance charges. The Co-

operative Court accordingly rendered a finding that the possession of the petitioner in respect of the flat no.102 amounted to trespass in the property of the disputant society. The Co-operative Court also considered both the written statements filed by the petitioner and observed that the petitioner was occupying the said flat unauthorizedly and without consent of the respondent no.1.

30. Insofar as the arrears of maintenance is concerned, while deciding issue nos. 4 and 5, the Co-operative Court held that the petitioner was directed to pay various amounts towards the maintenance charges from time to time which orders were not followed by the petitioner. The allegation of the respondent no.1 about the dues of the maintenance charges were not disputed by the petitioner by adducing any oral evidence. In the cross-examination of the witness of the respondent no.1, the petitioner did not dispute the amount of maintenance charges. The only contention of the petitioner was that the bills were not issued by the respondent no.1 and therefore, the maintenance amount was not paid. The petitioner also did not dispute the accounts maintained by the respondent no.1 in respect of the said flat no.102.

31. The Co-operative Court also considered the accounts of

maintenance charges for the flat no.102 filed on record by the respondent no.1 society along with the evidence and has recorded a finding that according to the record as on 1st January,2010, the petitioner was liable to pay a sum of Rs.19,21,801/-. In the cross-examination of the witness of the society, the petitioner did not challenge or disputed the said account. It is held by the Co-operative Court that the society had duly maintained the account of the said flat and also shows some amount whatever deposited by the petitioner in the said account. The respondent no.1 did not have any other independent source of income other than the contribution from the members for the purpose of maintaining the property of society and proving various amenities to its members. The petitioner was enjoying all the facilities provided by the society which other members of the society were enjoying but had failed to pay the maintenance charges thereby causing unnecessary burden upon other members of the society.

32. The Co-operative Court accordingly held that though the respondent no.1 society had prayed for interest at the rate of 21% per annum, the respondent no.1 is entitled to recover interest at the rate of 6% per annum from the outstanding amount. The Co-operative Court

accordingly directed the petitioner and the respondent nos. 3 to 5 to quit, vacate and handover the vacant and peaceful possession of the said flat to the respondent no.1 society and may handover the possession of the flat to the respondent no.2. The Co-operative Court also directed the petitioner to pay a sum of Rs. 19,21,801/- with interest at the rate of 6% per annum w.e.f. 1st January,2010 till realization of the entire amount. The Co-operative Court granted injunction against the petitioner and the respondent nos. 2 to 5 from creating any third party rights or interest in disputed flat till handing over possession to the society.

33. A perusal of the judgment delivered by the Co-operative Appellate Court on 9th October,2012 indicates that on 9th October,2012, the Co-operative Appellate Court dismissed the appeal filed by the petitioner and partly allowed the appeal filed by the respondent no.1 against the judgment and award passed by the Co-operative Court. The Co-operative Appellate Court framed six points for determination. It is held by the Co-operative Appellate Court that the Co-operative Court was justified in directing the petitioner to pay the arrears of maintenance charges and directing the petitioner to give vacant possession to the respondent no.1 society. The Co-operative Appellate

Court also upheld the order passed by the Co-operative Court dismissing the dispute against the opponent nos. 3, 4 and 5 and dismissing the claim of the society for mesne profit. The Co-operative Appellate Court considered the fact that the petitioner had not stepped into the witness box and did not file any document to show that he had entered into any agreement for sale and was inducted in the said flat based on any such agreement for sale. The membership of the developer in the records of the society continued in respect of the said flat.

34. The Co-operative Appellate Court accordingly rendered a finding that the possession of the petitioner was that of trespasser. The Co-operative Appellate Court also held that it was not disputed that neither the petitioner nor the respondent no.2 herein paid any maintenance charges to the respondent no.1 society. The Co-operative Appellate Court rejected the contention of the petitioner that he was inducted in the flat free of cost and free of maintenance charges. The Co-operative Appellate Court also rendered a finding that the Co-operative Court was justified in directing the petitioner to pay the arrears of maintenance and other charges in the sum of Rs.19,21,801/- due as on 1st January,2010 and thus the said judgment and award did

not warrant any interference.

35. The Co-operative Appellate Court however did not interfere with other part of the judgment and award rendered by the Co-operative Court which was against the respondent no.1 society except to the extent of interest awarded by the Co-operative Court at the rate of 6% per annum. The Co-operative Appellate Court held that it was just and proper to award interest at the rate of 9% as against the interest awarded at the rate of 6% by the Co-operative Court.

36. I am thus not inclined to accept the submissions of the learned counsel for the petitioner that the respondent no.1 did not lead any evidence or did not even file any affidavit as contemplated under Order 18 Rule 4 of the Code of Civil Procedure, 1908. The petitioner admittedly did not enter the witness box. None of the allegations made in the written statement filed by the petitioner were proved by the petitioner. The statement of account produced by the respondent no.1 in respect of the suit flat was not even disputed by the petitioner in the cross-examination. It was the case of the petitioner all throughout that the petitioner was entitled to occupy the said flat free of maintenance charges and was not liable to pay the amount to the respondent no.1. The findings of fact rendered by the two courts below are based on the

pleadings of both parties and the oral and documentary evidence led by the respondent no.1 and being not perverse, cannot be interfered with by this court under Article 226 of the Constitution of India.

37. Insofar as Notice of Motion (L)No.269 of 2013 filed by the petitioner is concerned, no case is made out by the petitioner for an order and direction against the respondent no.1 to furnish the official audit report. The respondent no.1 had already produced the statement of account of the society in respect of the said flat which documents were not disputed by the petitioner. The petitioner has not made out any case for grant of any relief in the said notice of motion.

38. Insofar as Notice of Motion No.272 of 2019 filed by the respondent no.1 is concerned, I am not inclined to direct the petitioner to pay cost of Rs.10 lacs or for initiating any contempt proceedings as prayed. Similar reliefs are also prayed by the respondent no.1 society in the Notice of Motion No.234 of 2014 in Writ Petition No.1600 of 2013. For the same reasons, I am not inclined to pass any order for payment of cost of Rs. 10 lacs or to initiate any criminal proceedings as prayed against the petitioner. Similarly the petitioner has also not made out any case for grant of any relief in Notice of Motion No.234 of 2014.

39. I, therefore, pass the following order :-

(a) Writ Petition No.1573 of 2013 and Writ Petition No.1600 of 2013 are dismissed.

(b) Rule is discharged.

(c) Notice of Motion (L)No.269 of 2013 and Notice of Motion No.234 of 2014 filed by the petitioner are dismissed.

(d) Notice of Motion No.272 of 2019 filed by the respondent no.1 in Writ Petition No. 1573 of 2013 and Notice of Motion No.262 of 2019 filed in Writ Petition No.1600 of 2013 are disposed of by dismissing Writ Petition No.1573 of 2013 and Writ Petition No.1600 of 2013.

(e) Rest of the reliefs claimed in the Notice of Motion Nos. 272 of 2019 and 262 of 2019 are rejected. There shall be no order as to costs.

(R.D.DHANUKA, J.)

At the request of the learned counsel for the petitioner, interim relief which was in force on the date of this order to continue for a

period of six weeks from today on the condition that the petitioner does not create any third party rights in respect of the suit flat and shall not part with possession thereof in favour of any third party.

(R.D.DHANUKA, J.)