

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

WRIT PETITION NO.10539 OF 2019

Atul Biharilal Shah	..Petitioner
vs.	
The State of Maharashtra & Ors.	..Respondents

**WITH
WRIT PETITION NO.10540 OF 2019**

Nisha Atul Shah	..Petitioner
vs.	
The State of Maharashtra & Ors.	..Respondents

**WITH
WRIT PETITION NO.10542 OF 2019**

Hemang Charudutt Shah	..Petitioner
vs.	
The State of Maharashtra & Ors.	..Respondents

**WITH
WRIT PETITION NO.10543 OF 2019**

Chetna Charudutt Shah	..Petitioner
vs.	
The State of Maharashtra & Ors.	..Respondents

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Mr. Vikhil Dhoka a/w. Mr. Maulik Chokshi a/w. Mr. Yash Mistry i/b. G.M. Legal, Advocate for Petitioners.
 Ms. Vaishali Nimbalkar, AGP for Respondent Nos.1 to 3 / State in WP No.10539/2019.
 Mr. Avinash Joshi, Advocate for Respondent No.4.
 Mr. N. C. Walimbe, AGP for Respondent Nos.1 to 3 in WP 10540/2019
 Mr. S. L. Babar, AGP for Respondent Nos.1 to 3 in WP Nos.10542/2019 and 10543/2019.

**CORAM : C.V. BHADANG, J.
DATE : 21st JANUARY, 2020**

PC.

. All these petitions challenge separate orders passed by the authorities under the Maharashtra Co-operative Societies Act, 1960 ('Act' for short) granting recovery certificate under Section 101 of the said Act in favour of the fourth respondent Co-operative Housing Society. As such, they are being disposed of by this common order.

2. There are 28 members in the fourth respondent society out of which, as many as 24 have not raised any dispute as to the 'painting charges' and the 'lift rope charges'. It is only the petitioners in these four petitions who have raised certain dispute about these two charges which amount to Rs.40,000/- in each of the petitions.

3. The recovery certificate granted by the Co-operative society has been confirmed in appeal by District Deputy Registrar.

4. Learned counsel for the petitioner has raised two contentions. First is that there is no General Body Resolution whereby the members have resolved to charge, the 'painting charges' and 'lift rope charges'. The contention is that in the absence of such resolution by the General Body, the charges could not have been recovered from the members. Secondly, it is contended that there was no demand which is a pre-requisite for grant of such recovery certificate. In the submission of learned counsel for the petitioner, such a demand can be raised by a bill or specific demand notice which is not forthcoming in this case. Learned counsel submitted that the resolution dated 21/12/2014 produced by the society before the revisional authority for the first time, is a resolution by the Managing Committee and not by the General Body. Learned counsel for the petitioners has submitted that the petitioners having

paid substantial amount of the recovery certificate, the same may be set aside. Except these, there are no other contentions raised.

5. Learned counsel for the fourth respondent has supported the impugned order. It is submitted that the authorities below after considering the circumstances and the material on record have rightly granted the recovery certificate. It is pointed out that the petitioners have also paid substantial part of the amount of the recovery certificate including 50% of the amount which was deposited before the revisional authority.

6. I have considered the circumstances and the submissions made. At the outset it is necessary to mention that 24 out of the 28 members have not raised any dispute about the charging of the painting charges as well as the lift rope charges. It is only the present petitioners who have raised certain dispute about the same and the monetary value of such disputed claim is about Rs.40,000/- for each of the petitioners. It is not in dispute that the petitioners have deposited substantial part of the amount which is recoverable under the recovery certificate.

7. Coming to the contentions raised on behalf of the petitioners, the revisional authority has noticed that it was the case of the petitioners that there was some discrepancy as regards the amount which was raised in the bill and which was claimed in the notice. If that be so, it cannot be accepted that there is no specific demand. Insofar as the the contention of the absence of the resolution by the General Body is concerned, it is not in dispute that the copy of the resolution dated 21/12/2014 was produced before the revisional authority. The contention on behalf of the petitioner is that although it was a resolution by the Managing Committee, the

authorities below have mistaken the said resolution to be of the General Body. In this regard, learned counsel for the fourth respondent has pointed out the observations of the revisional authority in which the revisional authority has also referred to a certain resolution of the General Body about these charges.

8. It is now well settled that the proceedings under Section 101 of the Act are of a summary nature and if there is a substantive dispute the parties can always resort to the remedy under Section 91 of the Act before the Co-operative Court. In fact, the authorities below have also made an observation to that effect. Considering over all circumstances and further having regard to the fact that the petitioners have paid substantial amount which is recoverable under the recovery certificate, in my considered view, no case for interference in the impugned order is made out in the exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India. All the petitions are accordingly dismissed with no order as to costs.

C.V. BHADANG, J.