

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5173 OF 2022
ALONGWITH
WRIT PETITION NO. 4909 OF 2022
ALONGWITH
WRIT PETITION NO. 5028 OF 2022
ALONGWITH
WRIT PETITION NO. 5182 OF 2022
ALONGWITH
WRIT PETITION NO. 4970 OF 2022
ALONGWITH
WRIT PETITION NO. 5185 OF 2022
ALONGWITH
WRIT PETITION NO. 5184 OF 2022

Shree Adinath Tower, A-Wing
CHS Ltd.

....Petitioner

V/s.

The Divisional Joint Registrar,
Co-operative Societies, and Ors.

....Respondents

* * * *

Mr. J.A. Udaipuri a/w. Mr. Ashok Kumar R. Upadhyay
i/by. M/s. A.R. Upadhyay & Co., Advocate for the
petitioner in all petitions.

Mr. Bhavin Gada i/by. Mr. Dhaval Mahesh Visawadia,
Advocate for respondents no.2 and 3 in WP-5184-2022 and
for respondent no.2 in WP-5028-2022.

Mr. Shreepad Murthy i/by. Mr. Abhishek Patil, Advocate
for respondents no.2 and 3 in WP-5173-2022, WP-4909-
2022, WP-5182-2022, WP-4970-2022 and WP-5185-2022.

Mr. P.V. Nelson Rajan, AGP for respondent no.1 in WP-
5173-2022.

Coram : Sandeep K. Shinde, J.

Monday, 12th September, 2022.

P.C. :

1. Heard learned Counsel for the parties.
2. This order shall dispose of, all the petitions since issue therein, is common in all.

BACKGROUND FACTS :

3. M/s. Astral Glass Pvt. Ltd, a member of the petitioner-Society had mortgaged its Flats No.103, 104, 105, 107, 108, 205 and 206 ("said flats" for short) to Union Bank of India. These flats were auctioned by the Bank to recover the dues in the recovery proceedings, instituted before the Debt Recovery Tribunal, Mumbai. The proclamation of sale was issued on 5th March, 2021 by the Recovery Officer-1. In auction, said flats were purchased by the respondents. As a result 'Certificates of sale' were issued in favour of the purchasers-respondents which were registered on 11th June, 2021. These Certificates of sale have attained finality, for want of challenge. Thereafter, the respondents applied for membership of Society in writing in the prescribed form. However, Society did not communicate decision to the respondents within stipulated time. Thus,

the respondents preferred an Appeal under Section 23(2) of the Maharashtra Co-operative Societies Act. The Deputy Registrar, Co-operative Societies, R-North Ward, Mumbai, allowed the Appeal vide order dated 18th January, 2021 and directed the Society, to grant membership to the respondents within 30 days and issue Share Certificate in their name/s. The correctness of that order was questioned in the Revisions under Section 154 of the Maharashtra Co-operative Societies Act, before the Divisional Joint Registrar. Pending revision applications for consideration, the Society moved applications seeking stay to the execution of the order dated 18th November, 2021 passed by the Deputy Registrar. The Divisional Joint Registrar, vide order dated 24th December, 2021 refused the stay. Feeling aggrieved by the order passed by the Divisional Joint Registrar, the Society has preferred these Writ Petitions.

4. It is evident from the pleadings, that the Society, refused to admit the respondents as Member/s of the Society, reason being M/s. Astral Glass Pvt. Ltd, their predecessor-in-title and Member of the Society, was in arrears of Society's dues to the tune of Rs.4,18,22,740/-.

5. Mr. Udaipuri, learned Counsel for the petitioner, strenuously urged, although maintenance dues-arrears, payable by M/s. Astral Glass Pvt. Ltd, were intimated to DRT and/or Bank yet charge was not created on the said flats to the extent of amount due and payable by M/s. Astral Glass Pvt. Ltd to the Society.

6. Be that as may be, Divisional Joint Registrar, upon appreciating submissions of the Society has rightly held that the recovery of the dues from past member and admitting, a person to membership, are two distinct issues governed by two definite provisions of MCS Act and therefore Society cannot deny membership simply because, the predecessor-in-title of the respondents were in arrears of the maintenance dues.

7. In any case, the Divisional Joint Registrar has granted liberty to the Society to adopt appropriate proceedings, either under Section 91 or Section 101 of the Maharashtra Co-operative Societies Act to recover maintenance dues.

8. In consideration of the above facts, impugned order, calls for no interference. Petitions are dismissed.

9. In case the Society institutes proceedings to recover past dues, the respondents are at liberty to raise all defences available in law.
10. Petitions are dismissed and disposed of in above terms.

(SANDEEP K. SHINDE, J.)

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