

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**965 CIVIL APPLICATION NO.1025 OF 2023
IN
WP/1270/2020 WITH WP/1270/2020**

**SOMNATH PANDURANG LAHANE
VERSUS**

**THE MAHARASHTRA STATE HOUSING CORPORATION LTD
MUMBAI THROUGH ITS OFFICER AND OTHERS**

...

Advocate for Applicant: Mr. Pawan K. Lakhotiya

Advocate for Non-applicant No.1:

Mr. P. V. Tapse Patil

AGP for the Non-applicant/State: Mr. N. T. Bhagat

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AND

...

**966 CIVIL APPLICATION NO.1037 OF 2023
IN
WP/1264/2020 WITH WP/1264/2020**

**SOMNATH PANDRANG LAHANE
VERSUS**

**THE MAHARASHTRA STATE HOUSING CORPORATION LTD
MUMBAI THROUGH ITS OFFICER AND OTHERS**

...

Advocate for Applicant: Mr. Pawan K. Lakhotiya

Advocate for Non-applicant No.1:

Mr. P. V. Tapse Patil

AGP for the Non-applicant/State: Mr. N. T. Bhagat

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CORAM: ARUN R. PEDNEKER, J.

DATE: 15th FEBRUARY, 2023

PER COURT:

1. The Writ Petitions involve identical question and are taken up together. The civil applications are inadvertently placed in a different writ petition. Facts stated in Civil Application No.1025 of 2023 filed in Writ Petition No.1270 of 2020 is to be treated as the Civil Application in Writ Petition No.1264 of 2020 and Civil Application No.1037 of 2023 filed in Writ Petition No.1264 of 2020 is to be treated as the Civil Application in Writ Petition No.1270 of 2020.

Facts in CIVIL APPLICATION NO.1025 OF 2023

2. Heard Mr. Lakhotiya, learned counsel for the Applicant and Mr. Tapse Patil, learned counsel for Non-applicant No.1 / The Maharashtra State Housing Corporation Ltd.

3. The Applicant purchased a Flat No.A-2/19 in Non-applicant No.4 / Shramic Co-operative Housing Society from one Mr. Sayed Gaffar Syed. The Non-applicant No.4 / Society has taken loan

from Non-applicant No.1 / The Maharashtra State Housing Corporation Ltd. for construction work of the cooperative housing society. At the time of the sale of the flat Sayed Gaffar Syed took no objection from Non-applicant No.1 and no due certificate dated 29.10.2009, for sale of above mentioned flat. Thereafter, the Applicant sold the said flat to one Mr. Sahebrao Mukne in the year 2014. Further No Objection Certificate was again issued by the Non-applicant No.1 to the Applicant for sale of the said flat and Mr. Sahebrao Mukne continued to be in possession of the said flat. In the year 2017, recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 was issued against the Applicant for loan over the said flat. The Applicant, preferred revision petition before the revisional authority as the applicant has not availed any loan personally from the Non-applicant No.1. As a condition precedent under Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960, the Applicant deposited Rs.1,06,001/-. Section 154(2A)

of the Maharashtra Co-operative Societies Act, 1960 reads thus:-

"154. Revisionary powers of State Government and Registrar

(1)..

(2)..

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 unless the applicant deposits with the concerned society, fifty per cent amount of the total amount of recoverable dues. If the revision application is allowed, the Revisional Authority may pass an order directing the society to refund the amount so deposited to the applicant: ..."

The said revision petition was allowed in favour of the applicant on 22.05.2018, however there was no consequential order by the revisional authority to remit Rs.1,06,001/- with accrued interest, deposited by the the Applicant with the Non-applicant No.1. Since, there was no consequential order of refund of the amount deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960, an application was moved by the Applicant praying for refund of the amount, which was deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960

and the said application is refused by the Non-applicant No.1.

4. Thus, the Applicant has filed present application seeking directions to the Non-applicant No.1 to refund the amount deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960. The learned counsel for the applicant submits that no interim orders are passed by this court in the Writ Petition filed by the Non-applicant No.1 and that in view of the two no dues certificates issued by the Non-applicant No.1 for transfer of the flat, that the amount deposited with the Non-applicant No.1 be refunded back to him. The learned counsel for the applicant submits that once the applicant succeeds in the revision petition on merits and the amount deposited by the applicant as a pre condition to file revision petition ought to have been refunded.

5. Mr. Tapse Patil, learned counsel appearing for the Non-applicant No.1 submits that

the No Objection Certificates were issued to the Applicant on both the occasions i.e. issued to Mr. Sayed Gaffar Syed and thereafter to the Applicant, wherein it was mentioned that if it is found at later stage that any amount is due, the same would be recoverable from the concerned person. The learned counsel for Non-applicant No.1 submits that there is an amount due from the loan taken by the Society and, as such, the Non-applicant No.1 is entitled to recover the same from the amount deposited by the Applicant at the time of filing revision petition.

6. The learned counsel for Non-applicant No.1 submits that as of today Rs.2,17,401.60/- is due qua Flat No.A-2/19.

Fact in CIVIL APPLICATION NO.1037 OF 2023

7. Heard Mr. Lakhotiya, learned counsel for the Applicant / original Respondent No.4 and Mr. Tapse Patil, learned counsel for Non-applicant No.1 / The Maharashtra State Housing Corporation Ltd.

8. The Applicant purchased a Flat No.A-2/11 in Non-applicant No.4 / Shramic Co-operative Housing Society from one Mrs. Meenal Dilip Chande. The Non-applicant No.4 / Society has taken loan from Non-applicant No.1 / The Maharashtra State Housing Corporation Ltd. for construction work of the cooperative housing society. At the time of the sale of the flat Mrs. Meenal Dilip Chande took no objection from Non-applicant No.1 for sale of above mentioned flat. Thereafter, the Applicant sold the said flat to one Mrs. Suman Sanjay Barve in the year 2013. Further No Objection Certificate was again issued by the Non-applicant No.1 to the applicant for sale of the said flat and Mrs. Suman Sanjay Barve continued to be in possession of the said flat. In the year 2017, recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 was issued against the Applicant for loan over the said flat. The Applicant preferred revision petition before the revisional authority as the applicant has not availed any loan personally from

the Non-applicant No.1. As a condition precedent under Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960, the Applicant deposited Rs.1,17,314/-. Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960 reads thus:-

"154. Revisionary powers of State Government and Registrar

(1)..

(2)..

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 unless the applicant deposits with the concerned society, fifty per cent amount of the total amount of recoverable dues. If the revision application is allowed, the Revisional Authority may pass an order directing the society to refund the amount so deposited to the applicant: ..."

The said revision petition was allowed in favour of the applicant on 22.05.2018, however there was no consequential order by the revisional authority to remit Rs.1,17,314/- with accrued interest, deposited by the the Applicant with the Non-applicant No.1. Since, there was no consequential order of refund of the amount deposited under Section 154 of the Maharashtra Co-

operative Societies Act, 1960, an application was moved by the Applicant praying for refund of the amount, which was deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960 and the said application is refused by the Non-applicant No.1.

9. Thus, the Applicant has filed present application seeking directions to the Non-applicant No.1 to refund the amount deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960 and as no interim orders are passed by this court and that in view of the two no dues certificates issued by the Non-applicant No.1 fro transfer of the flat, that the amount be refunded back to him. The learned counsel for the applicant submits that once the applicant succeeds in the revision petition on merits and the amount deposited by the applicant as a pre condition to file revision petition ought to have been refunded.

10. Mr. Tapse Patil, learned counsel appearing for the Non-applicant No.1 submits that the No Objection Certificates were issued to the Applicant on both the occasions i.e. issued to Mrs. Meenal Dilip Chande and, thereafter, to the Applicant, wherein it was mentioned that if it is found at later stage that any amount is due, the same would be recoverable from the concerned person. The learned counsel for Non-applicant No.1 submits that there is an amount due from the loan taken by the society and, as such, the Non-applicant No.1 is entitled to recover the same from the amount deposited by the Applicant at the time of filing revision petition.

11. The learned counsel for Non-applicant No.1 submits that as of today Rs.2,40,028.75/- is due qua Flat No.A-2/11.

CONSIDERATION & CONCLUSION:

12. Since the amounts are statutorily deposited, to invoke the jurisdiction of the revisional authority under Section 154 of the

Maharashtra Co-operative Societies Act, 1960 and the Applicant having succeeded in the said Revision Petitions, the revisional authority ought to have directed refund of the amounts deposited. Merely because the revisional authority failed to pass consequential order of refund of the statutorily deposited amounts, the applicants should not be deprived of the same. Further, this court has not passed any interim orders in both the Writ Petitions filed by Non-applicant No.1 / original Petitioner in the year 2020.

13. In view of the same, the Non-applicant No.1 / original petitioner is directed to refund the amount deposited with them as a pre-condition to file Revision Petition, along with accrued interest at the rate of 6% from the date of the deposit, to the Applicant / original Respondent No.4, within a period of four (4) weeks from today, in both the matters.

14. However, it is clarified that in the event the petitioner succeeds in the Writ

Petitions and it is held that the due amount is recoverable from the applicant, the applicant to return the amount withdrawn within a period of eight (08) weeks of Judgment of this Court. The applicant to give an undertaking to that effect at the time of withdrawal of the amounts.

15. The Civil Applications stand disposed of.

[ARUN R. PEDNEKER, J.]

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