IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6294 OF 2022
WITH
WRIT PETITION NO.6308 OF 2022

Sudhakar Co-op. Hou. Soc. Ltd.
Thr. Secretary … Petitioner
Versus
The Hon'ble District Deputy Registrar,
Co-operative Societies & Ors. … Respondents

…

Dr. Abhinav Chandrachud, i/w. Ms. Usha Tiwari, Ms. Manshi Jain for Petitioner.
Mr. Rubin Vakil, a/w. Ms. Nikita Lad i/b. Mr. Ashok Purohit & co. for Respondent Nos.3 in both.
Mrs. V. S. Nimbalkar, AGP/Respondent Nos.1 & 2 in both.

…

CORAM : SANDEEP V. MARNE, J.
DATE : 07 NOVEMBER 2023

JUDGMENT :

Rule. Rule is made returnable forthwith. With the consent of learned counsels appearing for the parties, petitions are taken up for final hearing.

2. Petitioner-Society has filed present petitions challenging Orders dated 24 February 2022 passed by the Divisional Joint Registrar, Co-Operative Societies, Mumbai allowing Revision Application No. 27

of 2021 and 28 of 2021 filed by Respondent No. 3 and setting aside the Orders dated 23 July 2021 passed by the Deputy Registrar, Co-operative Societies, D-Ward, Mumbai. Petitioner-Society filed Applications under section 101 of Maharashtra Co-operative Societies Act, 1960 (**MCS Act 1960**) which were allowed by the Deputy Registrar by Orders dated 23 July 2021. Upon Revisions filed by Respondent No.3, those Orders of the Deputy Registrar have been set aside by the Divisional Joint Registrar by Orders dated 24 February 2022 which are subject matter of challenge in the present petitions.

3. Facts of the case are that Petitioner is a Co-operative Housing Society registered under the provisions of MCS Act 1960. Dr. Jhabarmal Mishra was the original member of the Society in his capacity as owner of Flat No. 2A. His wife Purnadevi Jhabarmal Mishra was a member of Society in respect of Flat No. 2B. Jhabarmal Mishra passed away on 07 August 1979 and Purnadevi Jhabarmal Mishra passed away on 12 April 1992. After their demise, there appears to be disputes amongst family members about inheritance of those Flats and membership with the Society. Respondent No. 3 Mr. Manoj Surendra Mishra claims to be in occupation of Flat No. 2A and 2B. He filed applications for membership with the Society. He sought declaration of deemed membership under section 22 (2) of the MCS Act, which came to be rejected by the Deputy Registrar by Order dated 08 June 2004. He filed application under section 23(2) of the MCS Act which also came to be rejected by Order

dated 14 February 2005. This is how disputes amongst family members of Dr. Jhabarmal Mishra and Smt. Purnadevi Mishra have resulted in non-admission of the heirs as members of the Society.

4. By adoption of resolution in extraordinary General Body Meeting held on 28 April 1991, the Society decided to start collecting funds for major repairs of the building from 01 January 1992 every quarter @ of Rs. 1,00,000/- per floor or where there are two Flats on a floor Rs.50,000/- per Flat from the members subject to total amount not exceeding Rs. 10 lakh per Flat or Rs. 20 lakh per floor. Resolution was also adopted to charge interest @ Rs.18% per annum on delayed payments. The Society claims that Dr. Suresh Mishra's father (Respondent No. 3) was present in the extraordinary General Body Meeting dated 28 April 1991. That he paid total amount of Rs. 5 lakh for which he was given a credit by the Society. In further Special General Body meeting held on 02 January 2000, the Society resolved to collect Rs.1,50,000/- per Flat towards replacement of two lifts and bills for Rs. 1,50,000/- were raised in respect of Flat No. 2A and 2B, which remained unpaid.

5. Since there was outstanding in respect of Flat No. 2A and 2B, both towards maintenance as well as towards repairs and lift replacement, Society filed Recovery Application No. 333 of 2005 and 332 of 2005 on

01 March 2005 which came to be withdrawn on 05 August 2005 since the same were filed in the names of deceased members. Later, the Society filed Recovery Application Nos. 29 of 2006 and 30 of 2006 against legal heirs of the original members for recovery of amount of Rs. 18,61,500/- in respect of Flat No. 2B and Rs. 19,10,590/- in respect of Flat No. 2A. By Order dated 09 May 2006, the Recovery Applications were rejected by the Deputy Registrar on the ground of passing of Orders by this Court about legal heirs of the deceased members. Liberty was granted for fresh applications after taking necessary decision about legal heirs as per the Order passed by this Court. The Orders dated 09 May 2006 were challenged by the Society by filing Revisions before the Divisional Joint Registrar who set aside the Orders passed by the Deputy Registrar on 13 December 2012 and remanded the proceedings before Deputy Registrar for being decided afresh. Those proceedings are apparently pending before the Deputy Registrar.

6. In the above background, the Society filed fresh Recovery Applications against legal heirs of the deceased members of the Society under Section 101 of the MCS Act for recovery of amounts of Rs. 70,08,101/- in respect of Flat No. 2B and Rs. 69,69,327/- in respect of Flat No. 2A. In the meantime, Dispute Application No. 332 of 2019 was filed by Respondent No. 3 along with his mother Sukanta Mishra for transfer of share certificates in their names. During pendency of the Recovery Applications, Respondent No.3 filed Application on 22

December 2019 and applied for various documents to the Society. It appears that Society supplied to Respondent No. 3 all the resolutions adopted by Annual General Body Meeting and Special General Body Meeting, Circulars, Audit Reports, etc. Respondent No.3 thereafter filed his reply to both the Recovery Applications. By Orders dated 23 July 2011, the Deputy Registrar allowed the Recovery Applications by issuing recovery certificates in the sums of Rs. 68,04,475/- in respect of Flat No. 2B and Rs. 68,05,277/- in respect of Flat No. 2A along with interest. Corrigendum was issued on 11 August 2021 with regard to corrections in the name of 'S. J. Mishra' to 'late J. S. Mishra.'

7. Respondent No. 3 filed Revision Application Nos. 27 of 2021 and 28 of 2021 challenging Orders dated 23 July 2021 passed by the Deputy Registrar. He deposited 50% amount in respect of the recovery certificates with the Society. The Revision Applications were resisted by the Petitioner-Society by filing it's reply. By Orders dated 24 February 2022, the Divisional Joint Registrar has allowed the Revision Application and has set aside the Orders passed by the Deputy Registrar on 23 July 2021. The Society is aggrieved by the decision of the Divisional Joint Registrar dated 24 February 2022 and has filed present petitions.

8. Dr. Chandrachud would appear on behalf of Petitioner-

Society and submit that the Divisional Joint Registrar committed a gross error in allowing Revisions only on the ground of complications in the case. He would submit that except recording a vague finding of complicated disputes for prolonged period, no other finding is recorded by the Divisional Joint Registrar for sitting aside Orders passed by the Deputy Registrar. He would submit that jurisdiction of the Deputy Registrar under Section 101 of MCS Act is summary, and he is bound to issue Recovery Certificate upon production of statements of accounts and other documents evidencing dues from a member. He would submit that the Society produced all resolutions adopted in Annual General Body Meetings and Special General Body Meetings justifying demand of repair charges. Lift replacement charges, etc in respect of Flat No. 2A and 2B. That there is no bonafide defence for Respondent No.3. That in absence of any bonafide defence, the Deputy Registrar had rightly allowed the Recovery Applications and issued recovery certificates in favour of the Petitioner-Society. Relying on the Judgment of this Court in ***Top Ten vs. State of Maharashtra,*** (2012) 1 MhLJ 347 he would submit that the Registrar is required to issue recovery certificate once the Society produces statements of accounts and other necessary documents in absence of any bonafide defence.

9. So far as the objection about pendency of previous recovery proceedings before the Deputy Registrar is concerned, Dr. Chandrachud would contend that the principle of *res subjudice* will not apply to

recovery proceedings filed under Section 101 of the MCS Act. That the recovery proceedings filed in the year 2019 covers the entire dues up to 31 March 2019 and that the amounts claimed in the previous Recovery Applications are also subsumed in the recovery proceedings filed in the year 2019. That once the recovery certificates issued on 23 July 2021 are satisfied, Society shall not pursue the Revision Application Nos. 29 of 2006 and Revision Application Nos.30 of 2006 which have been remanded to the Deputy Registrar on account of Order passed by the Divisional Joint Registrar. He would submit that the limitation prescribed under provisions of section 92(1)(a) of MCS Act does not apply to Recovery Proceedings filed under section 101 of the MCS Act.

10. Mr. Vakil would appear on behalf of Respondent No.3 to oppose the petitions and support the Orders passed by the Deputy Registrar. He would question the maintainability of the recovery proceedings filed by the Society on the ground that Respondent No.3 has not been admitted as member of the Society. That recovery proceedings cannot be filed against a person under Section 101 of the MCS Act 1960, who is not a member of the Society. That the application filed by Respondent No.3 for deemed membership has been rejected by Deputy Registrar and therefore the provisions of MCS Act cannot be invoked against Respondent No.3. He would submit that the Society will have to initiate proceedings in Civil Court for recovery of its alleged dues. He would also question the maintainability of recovery proceedings filed in

the year 2019 on the ground of pendency of previously filed Recovery Application Nos. 29 of 2006 and 30 of 2006. That the Society could not have filed fresh recovery proceedings in 2019 during pendency of recovery proceedings filed in 2006. The Society has been repeatedly filing recovery proceedings against Mishra family, this is being the third recovery proceedings filed since the year 2005. He would further submit that the claim of the Society is barred by limitation. That since provisions of Section 92 of the MCS Act do not apply to the recovery proceedings under Section 101, the general limitation of 3 years under the Limitation Act would apply to such proceedings.

11. Mr. Vakil would further submit that Respondent No.3 is willing to pay the maintenance charges if he is admitted as member of the Society. That however the Society is refusing to admit him as member of the Society. He would further submit that the Society is demanding unreasonable amounts from Respondent No.3 without producing any accounts of expenditure carried out in respect of repairs of the building. That Respondent No.3 / his father have paid various amounts to the Society for carrying out the repairs, which are not related in the accounts by the Society. That Respondent No.3 has thus valid and bonafide defences and therefore the Divisional Joint Registrar has rightly arrived at a conclusion that complicated legal issues are involved in the present case which cannot be decided in recovery proceedings under section 101 of the Act.

12. Rival contentions of the parties now fall for my consideration.

13. The Divisional Joint Registrar has proceeded to allow the Revisions filed by Respondent No.3 and has set aside the recovery certificates issued by Deputy Registrar in favour of Petitioner-Society by holding that amounts shown to be due by the Society are disputed and there are complicated disputes amonst parties. The findings recorded by the Divisional Joint Registrar in paragraph 3 and 4 of the Order under the heading ‘Observations and Conclusions’ are as under :-

> ३) अर्जदार यांचे म्हणणे आहे की, संस्थेची नोंदणी सन १९६९ साली झालेली आहे व संस्थेने दुरुस्तीबाबतची आकारणी शुल्क सन १९९८ पासुन सुरु केले व त्यांची बिले १९९२ पासुन देणेस सुरुवात केली असे अर्जदार यांचे म्हणणे आहे. अर्जदार हे आजच्या तारखेपर्यंतची नियमितपणे देखभाल शुल्काचा भरणा संस्थेकडे करीत आहेत, असे त्यांच्या अर्जात नमुद केले आहे. संस्थेने दाखल केलेल्या विवरण तपशिलामध्ये सदर रक्कम भरणा केल्याचे दिसुन येत नाही. या उपर संस्थेने मागणी केलेला खर्च कामासाठी केल्याचा कोणताही खुलासा दिला नाही. तसेच मोठ्या दुरुस्तीबाबत बिलांमधील नमुद रकमा मोठ्या असुन, त्याबाबत अर्जदार व प्रतिवादी यांचेमध्ये वाद आहे. प्रस्तुत दाव्याच्या सुनावणी दरम्यान संस्थेने आवश्यक ती कागदपत्रे सादर करणे अत्यावशक होते. तसेच कायदा कलम ३२ नुसार संबंधीत नोंदी तपासणीसाठी अर्जदार हे परस्पर सहमत तारखेला व वेळी भेट देऊ शकतात हे संस्थेचे म्हणणे असले, तरी दाव्याच्या सुनावणी दरम्यान संस्थेने सदरची कागदपत्रे सादर करणे आवश्यक होते. याबाबत निम्न प्राधिकरणाने संस्थेस दिनांक ०४/१०/२०१९ रोजीच्या पत्रान्वये सुचित केलेले आहे. अर्जदार यांनी अडीच वर्षापुर्वी मा. सहकार न्यायालयात दावा दाखल केलेला असुन, न्यायालयाने याबाबत कोणतेही आदेश पारित केलेले नाहीत, असे संस्थेचे म्हणणे आहे, ती बाब व सदर पुनरिक्षण अर्ज ह्या दोन्ही स्वतंत्र अशा खात्री आहेत. अर्जदार यांचेकडे संस्थेने दाखविलेली रक्कम ही विवादीत असुन, सदर बाब गुंतागुंतीच्या स्वरुपाची आहे व मोठ्या दुरुस्तीबाबत असुन त्याबाबचे कोणत्याही प्रकारचे कागदपत्रे सादर केलेली नाहीत. जाबदार संस्थेचे म्हणणे आहे की, मोठ्या दुरुस्ती (Major Repair) बाबत तत्कालीन हिशेब पत्रके व लेखे वाळवीने नष्ट झाली आहेत. त्या पृष्ठ्यर्थ काहीही कागदोपत्री सबळ पुरावे सादर केलेले नाहीत. त्यामुळे त्याबाबत संबंधीतांचे जाब-जबाब घेवून खात्री करणे आवश्यक आहे, अशी या

प्राधिकरणाची धारणा आहे.

प्रस्तुत अर्जात निम्न प्राधिकरणाने अर्जदाराविरुध्द सन १९९२ पासुन २०१९ पर्यंतच्या दोन्ही कालावधीच्या रकमेच्या संदर्भात दाखला दिला आहे. परंतु त्यासाठी आवश्यक सर्व कागदपत्रांची छाननी करणे क्रमप्राप्त होते तसेच दोन्ही पक्षकारात प्रदीर्घ कालावधीचा विवाद असुन तो गुंतागुंतीचा असल्याचे या कार्यालयाचे मत आहे. त्यामुळे अर्जदार यांचे विरुध्द निम्न प्राधिकरणाने पारित केलेला आदेश, यामुळे अर्जदार यांचे आर्थिक नुकसान होण्याची शक्यता निर्माण झाली आहे. न्यायाच्या दृष्टीने याबाबत मा. सहकार न्यायालयात, महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ९१ खाली दावा दाखल करुन योग्यतो आदेश प्राप्त करूद घ्यावेत असे या कार्यालयाचे मत झालेले असल्याने खालील प्रमाणे आदेश पारीत करण्यात येत आहे.

14. Divisional Joint Registrar has thus recorded the claim of Respondent No. 3 that he has paid maintenance charges from time to time which is not reflected in the account statements filed by the Society. He has further held that the exact purpose for expenditure incurred by the Society is not explained. The amounts claimed towards major repairs are substantial, about which there are disputes amongst the Society and Respondent No.3 and the Society ought to have produced necessary documents about the same. It is further held that the amount claimed by the Society is disputed and said aspect is of complex nature. That the Society did not produce documents in respect of major repairs on the ground that the accounts statement relating to major repairs are destroyed by termite. That in absence of any concrete proof in support of claim of destruction of records, it is necessary to record statements of concerned persons. It is further held that since the recovery claim is in respect of prolonged period from 1992 to 2019, there are complications in examining necessary documents. He has further held that Respondent

No.3 is likely to suffer financial losses on account of Orders passed by the Deputy Registrar. By recording these findings, the Divisional Joint Registrar has held that the Society should file the Dispute under Section 91 of the MCS Act. This is how the Divisional Joint Registrar has proceeded to allow the Revision Applications filed by Respondent No.3 and has set aside the recovery certificates dated 23 July 2021 issued by the Deputy Registrar.

15. The jurisdiction of Registrar under section 101 of the MCS Act is summary in nature. The Registrar is empowered under Section 101 to issue a recovery certificate to Society upon furnishing statement of accounts in respect of arrears, after making an inquiry. Sub-Section (1) of Section 101 reads thus :-

> **101**. (1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947 or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance 4[or for other agricultural purposes as aforesaid] or by a crop- rotection society for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them 5[or by a Taluka or Block level village artisans multi-purpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues, by a co-operative dairy society advancing loans

> for the recovery of arrears of any sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues or any sum advanced by the District Central Co-operative Bank to its individual members or by non- agricultural co-operative credit society for the recovery of the arrears of its dues, or by salary-earners co-operative society for the recovery of arrears of its dues or by a fisheries co-operative society for the recovery of arrears of its dues or by any such society, class of societies, as the State Government may, from time to time, notify in the Official Gazatte, for the recovery of any sum advanced to, or any subscription or any other amount due from, the members of the society or class of societies so notified and **on the society concerned furnishing a statement of accounts and any other documents as may be prescribed in respect of the arrears, the Registrar may, after making the inquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears**. The application for grant of such certificate shall be made in such form and by following such procedure, accompanied by such fees and documents as may be prescribed.

16. The scope of jurisdiction of Registrar under section 101 of MCS Act has been discussed by Division Bench of this Court in ***Top Ten*** (supra) in which it is held in paragraph 16 to 19 as under :

> 16. Section 101 which opens with non obstante clause reads "*101 (1). Notwithstanding anything contained in sections 91, 93 and 98, on an application made by*". Thus this section gives an additional remedy to particular types of societies as enumerated therein. Normal remedy envisaged is under section 91. Dispute filed by such society can be tried as a regular dispute as per Rule 77-E or then as a summary dispute under Rule 77F. Rule 77F contemplates and identifies a particular type of disputes for summary disposal. Thus from otherwise, large types of disputes which may be filed before the Co-operative Court and disposed of under Rule 77-E, a category is carved out for expeditious disposal where the debtor like the present petitioner has to seek a leave to defend, as per Rule 77F(3). Section 101 carves out a still narrower type of dispute or controversy. It speaks of arrears due to certain societies and its recovery as land revenue. Therefore, it proceeds on "arrears due" and only for that purpose the concerned society has to

furnish a statement of account in respect of the arrears. The Registrar has to make an enquiry only in relation to those arrears. It is, therefore, obvious that the legislature which thought it proper to extend to a debtor/borrower an opportunity of claiming leave to defend under section 94(4) of the 1960 Act, read with Rule 77F, has itself provided this remedy whee very narrow enquiry is required. The legislature obviously has given importance to co-operative movement and public interest which is evident from sub-section (2) of section 101. The enquiry contemplated by the registrar is, therefore, extremely narrow The learned Additional Government Pleader appearing on behalf of the respondent State has pointed out that wherever necessary legislature has expressly conferred power upon the authority to record evidence Section 94(1) and section 144D are pointed out to be instances of such use of power by the legislature. It is an admitted position here that Chapter VIIIA of 1961 Rules or then section 101 of 1960 Act, do not confer such power upon the Registrar while conducting enquiry as necessary under section 101.

17. Chapter VIIIA of 1961 Rules vide its Rule 86A shows procedure for filing application for grant of certificate for recovery. The form in which it is to be filed is also prescribed and documents which must accompany are also stipulated. Form "U" in which application under section 101 is required to be filed shows the requirement of disclosure of relevant facts by the concerned society; all necessary facts which make the respondents before that authority either borrower or guarantor; the procedure followed for sanctioning loan, securities furnished, documents executed. The applicant then has to point out failure to repay principal amount and interest upon it and demand/demands made by the concerned society. A resolution of the Board of Directors to file an application under section 101 is, also required to be pleaded. Details of loan transaction are also required to be pointed out as part and parcel of this application. The application is required to be supported by affidavit of responsible officer of a co-operative society. Rule 868 contemplates scrutiny of such application by the Registrar. Registrar cannot issue notice to other side, if such application is incomplete in material respect. The other side is expected to file written statement Rule 86C contemplates appearance of party, either personally or through an Advocate and consequence of failure to appear. Rule 86D enables both the parties to file documents. It also enables the Registrar to call for such other documents from opposite party by order in writing, if production of such document is found essential. Request for such production from opponent cannot be

entertained before he files his written statement. Adverse inference can be drawn if the document is not produced, after such direction. The applicant Society has to prove contents of its application and also show how the contentions raised in defence by other side are not correct. After this exercise is undertaken by the applicant Society, the opponent has been given opportunity to file reply in support of his defence, and after such reply, Registrar has to hear oral arguments. Then he has to deliver a reasoned judgment under Rule 86F. If he issues certificate, it has to be in Form "V". Rule 86-E specifically stipulates that no cross-examination of any of the parties is permitted.

18. Use of both words i.e., "arrears and due" together in section 101 is itself manifestation of very limited inquiry felt necessary under section 101before issuing the certificate. In plain English, both words may be synonymous. New Oxford Advanced Learner's Dictionary gives following meaning of these words. "Arrears" means a money which has not been paid at right time. "Due" is stated to mean it must be paid immediately, owed to somebody as it is their right or they have done something to deserve it. In Chambers 20th Century Dictionary, word "Arrear" means that which remains unpaid or undone. Word "Due" means - owed, that ought to be paid to another. Blacks Law Dictionary (9th Ed.) states "Arrears" means the state of being behind in payment of a debt or the discharge of an obligation, an unpaid or overdue debt, Word "Due" means immediately enforceable, owing or payable, constituting a debt. Advanced Law Lexicon by P. Ramanatha Aiyyar 3rd. Ed. also shows same meaning of word "Due". It also points out that said word has different meanings and that meaning has to be put on it which fits in with the context. Meaning of arrears shows that which remains unpaid though due. T.P. Mukherjee's Law Lexicon states "Arrears" means payment remaining unpaid at the due time. It also explains "due" to mean amount which has matured and is in arrears.

1975 Mah LJ 22 (1974) 2 SCC 293 / AIR 1974 SC 1613, Dhan Singh Ramkrishna Chaudhuri v. Laxminarayan Ramkrishan shows that arrears means money unpaid at due time. Here, it is beyond doubt that both these words do not signify same state of affairs ie, non-payment Word " Due " therefore is not duplication of what is conveyed by word "arrears". It indicates that amount which is found or determined to be outstanding and hence, recoverable. Thus statement of accounts and other facts essential under Rules to be disclosed by the concerned

Society and to be looked into by the Registrar reveal that said amount of arrears has to be "due" i.e., payable. This quasi-judicial exercise is made final by legislature and not kept open under section 91 only because of possibility of determination of the limited aspect about arrears due without adjudication on any disputed questions of facts, Such factual disputes cannot and have not been subjected to and fall outside the procedure under section 101. Thus, either the arrears are already declared due by some authority or then can be ascertained on the basis of statement of accounts and other material on record by Registrar. Moment it is demonstrated to Registrar that a bona fide and genuine defense about said arrears is raised which calls for a finding on disputed facts, need for cross-examination surfaces and section 101 ceases to apply. Procedure laid down for enquiry under section 101 itself manifests said legislative intention. It cannot be even urged that legislature made that certificate final while denying the right to dispute the facts cardinal for its determination and intended to fasten the recovery as liability upon a person having bona fide and valid defence. Section 101(2) again indicates this as it expects the Registrar to be satisfied about the failure of concerned society to take steps under its sub-section (1) in respect of any amount "due as arrears".

19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F.

In Ramchandra v. Collector (supra), the Division Bench of this Court has looked into the provisions of section 137. Section 137(1)

> was earlier a provision pari materia with provisions of section 101. Section 137(1) enables the Registrar to make such enquiry as he deems fit.' Section 101 was also containing same phrase till 10-5-2006. On that date, the said words have been replaced and Registrar, is obliged to conduct enquiry in such manner as may be prescribed. Thereafter, Chapter VIIIA has been added to 1961 Rules, prescribing the mode of enquiry. Thus, said Division Bench judgment is no longer relevant for interpreting the scheme of section 101. Paragraph 26 of this Division Bench judgment on which the petitioners have placed reliance, however, does not show any express finding about need of extending an opportunity of cross-examination. Moreover, there is no provision either in 1960 Act or in 1961 Rules, prohibiting such cross-examination in section 137 enquiry. This judgment, therefore, is of no assistance in present situation.

17. Thus, under Section 101 of the MCS Act, the Registrar has to make a limited inquiry as to whether the Society presented statements of accounts showing arrears from member. Once the Society proves from the statement of accounts that a member is in arrears, it can consider the defence raised by the member. While deciding such a defence, the Registrar makes a summary inquiry to find out whether any genuine defence is made out and whether any disputed question of fact is raised by the member. The Registrar can also take into consideration wheather any amount already paid by a member is not reflected in the statements of accounts. This is a limited scope under which Registrar can undertake inquiry provision of Section 101 of the Act of 1960.

18. In the present case, there is no dispute to the position that Society produced statement of accounts showing arrears of maintenance and repair funds due from legal heirs of the original members.

Respondent No.3 filed reply raising various technical issues such as dissolution of managing committee, appointment of administrator, appointment or hiring a consultant for removal of administrator, the rejection of recovery proceedings filed in the year 2005, remand of the recovery proceedings filed in the year 2006, etc. He further raised issue with regard to not providing of details about the major repairs carried out by the Society. He also raised the issue about failure on the part of Society to admit him as a member. These are the broad defences taken by the Respondent No.3 before the Deputy Registrar. It must be observed here that before filing his reply, Respondent No.3 demanded several documents from the Society by his letter dated 22 November 2019. The Society has provided voluminous documents comprising minutes of the Managing Committee Meetings, minutes of the Annual General Body Meeting and minutes of extraordinary General Body Meetings held during the years 1990 to 2019. It also provided statements of accounts alongwith Audit Reports since the year 1988 till the year 2017. After providing these details, Respondent No.3 was not able to raise any bonafide defence about any error in the statement of accounts filed by the Society. Also of relevance is the fact that Respondent No.3 did not challenge the resolutions adopted in the Annual General Body Meetings or Special General Body Meetings by the Society. Once resolutions are not challenged, the same are become binding and it's effects cannot be questioned in Recovery Proceedings under Section 101 of the MCS Act. Once the Society adopts resolution for collection of contributions for carrying out major repairs or for installation of lifts, member is bound to act on those resolutions unless they are challenged. In Recovery Proceedings, members cannot question implementation of decisions taken in those resolutions, which have attained finality.

19. In recovery proceedings filed under Section 101, it is not necessary for the Society to prove that the contributions collected from members in accordance with resolutions were rightfully spent for the purpose for which they were collected. For those grievance, members have separate remedies under the MCS Act for seeking appointment of auditor to conduct re-audit of accounts of the Society. The jurisdiction of the registrar under Section 101 is extremely limited. The moment a society presents statement of accounts showing arrears from a member and backs it with resolutions authorizing society to demand amounts reflected in accounts, the summary inquiry to be conducted by Registrar then gets restricted to verifying the accounts and examining whether amounts paid by a member have been reflected in those accounts or not. The Registrar is not expected to institute an inquiry whether the expenditure incurred by society is lawful or not. Therefore the finding the of the Divisional Joint Registrar about failure by society to prove destruction of records relating to expenditure are totally unsustainable. It is incomprehensible as to why the Divisional Joint Registrar wanted details of those expenses incurred on major repairs. That is not the jurisdiction vested in the Registrar under Section 101.

20. In my view therefore it was not at all necessary for the Registrar to go into the issue of expenditure incurred by the Society on major repairs of the building. It is collective decision taken by the General Body of the Society to carry out major repairs and to collect substantial contributions from members. If any member is aggrieved by Society's decision in fixing amount of contribution, that resolution will have to be challenged before appropriate authority. There is nothing on record to indicate that Respondent No.3 or his father ever raised any challenge with regard to any of the decisions taken by the General Body of the Society since the year 1991. Having acquiesced in the decisions adopted by the general body of the Society to carry out major repairs, replacement of lifts, etc. and in amount of proportion of expenditure fixed by the society in respect of each Flat, Respondent No. 3 cannot now be permitted to raise defence with regard to expenditure incurred in relation to major repairs of the building.

21. In my view therefore the inquiry before the Deputy Registrar was plain and simple. The Society adduced the statement of accounts showing arrears. It also relied upon resolutions adopted by the General Body to recover contribution from members. It has come on record that Petitioner's father Shri. Surendra Jhabarmal Mishra was present in the extraordinary General Body Meeting of the Society held on 28 April 1991, wherein decision was adopted to collect Rs.50,000/- per Flat per quarter till recovery of amount of Rs.10 lakh per Flat. It appears that he

paid amount of Rs. 5 lakh to the Society for which credit is given in the statement of accounts. Later he or his heirs failed to contribute further due amounts. In such circumstances, the decision of the general body to recover amounts fixed in the resolutions dated 28 April 1991 cannot be questioned by raising vague challenges about incurring of expenditure. To my mind, there are no complicated questions involved in the present case to relegate the Society to remedy of Dispute under section 91 of the MCS Act 1961. Divisional Joint Registrar has clearly erred in holding that there are complicated questions involved in the present case or that no evidence is required to be adduced to establish arrears due from Respondent No.3.

22. So far as the issue of maintainability of Recovery Applications is concerned, maintainability is questioned on twin grounds of Respondent No.3 not being member and pendency of Recovery Proceedings initiated by Society in the year 2006. So far as the issue of membership of Respondent No.3 is concerned, the Society is unable to transfer membership on the ground of disputes pending between the family members. Dr. Chandrachud would make a statement during the course of hearing of the petition that Society is willing to admit Respondent No.3 as a provisional member till the decision of disputes amongst the family members, if absence of membership is the only reason for non-payment of the Society's dues. Though Mr. Vakil did consider the proposal, no consensus could be arrived on the exact amount that

Respondent No.3 was willing to pay the Society. Be that as it may. Delay in transfer of membership in respect of Flat No. 2A and 2B is fully attributable to Respondent No.3 and his family members. The Society is not responsible for the same. The question is whether other members of the Society should suffer because of membership disputes with regard to Flat No. 2A and 2B. If Respondent No.3 fails to pay dues only on account of disputes amongst family members in respect of Flat No. 2A and 2B, the other members of the Society will have not to contribute their shares. This is like taking benefit by a person of his own wrong. Respondent No.3 claims that title in Flat No. 2A and 2B vested in original members Dr. Jhabarmal Mishra and Purnadevi Jhabarmal Mishra. The Society cannot be made to wait endlessly till resolution of disputes amongst the family members. Respondent No. 3 has volunteered to represent Mishra family in respect of Flat No. 2A and 2B. The Recovery Application was filed by the Society against 'legal heirs of deceased Dr. J. Mishra and legal heirs of late Smt. Poornadevi J. Mishra'. In those Applications, Respondent No.3 voluntarily participated and filed affidavit in reply. He cannot now be permitted to raise a defence that the proceedings were not maintainable in absence of impleadment of surviving member. In such circumstances the Recovery Application cannot be treated as not maintainable on the ground of delay in finalizing transfer of membership just because of pendency of disputes amongst family members. Therefore, the first ground of maintainability is baseless and deserves to be repelled.

23. So far as the second ground of maintainability is concerned, the same is premised on pendency of remanded proceedings in Recovery Application Nos. 29 of 2006 and 30 of 2006. As observed above, Recovery Proceeding No.29 of 2006 and 30 of 2006 were also rejected by the Divisional Joint Registrar by Order dated 09 May 2006 and he had remanded the same by Order dated 13 December 2012. The said Recovery Applications have not been decided till date for the reasons unknown. In the meantime, the dues in respect of Flat No.2A and 2B mounted and by the year 2019, the same had risen to the extent of Rs.70,08,101/- for Flat No. 2B and Rs.69,69,327/- for Flat No.2A. It is in the light of these peculiar facts that the Society was required to take recourse to filing composite Recovery Applications in respect of entire dues up to 31 March 2019. There is no dispute to the position that the principle of *res judicata* would not apply as previous Recovery Proceeding Nos.29 of 2006 and 30 of 2006 have not been decided. The issue is about applicability of principle of *res-subjudice*. There is no dispute to the position that the principle of *res-judicata* is applicable to quasi judicial proceedings. Whether the principle of *res-subjudice* would also apply to proceedings before quasi-judicial authorities becomes questionable. Considering the broad objective behind enactment of provision of Section 101, which is the recovery of Society's dues by adopting summary proceedings, in my view subsequently instituted proceedings need not be stayed on the ground of pendency of previously instituted proceedings. Ultimately in both the proceedings, the Registrar has to make merely a

summary inquiry by looking into the statement of accounts and by considering whether there is any genuine defence. In such circumstances, subsequent applications filed for recovery of dues including the period in respect of which earlier application is pending, cannot be said to be barred by the principle of *res-subjudice*. In my view therefore Recovery Proceedings filed in the year 2019 cannot be held to be not maintainable. Divisional Joint Registrar himself has not considered them to be not maintainable.

24. The issue of limitation sought to be raised by Mr. Vakil is based on the submission that non-applicability of provisions of section 92 of MCS Act to recovery proceedings under Section 101. It would attracting general period of limitation of 3 years for filing a money suit. In my view there is no specific period of limitation prescribed under provisions of section 101 of MCS Act. Therefore the objection of limitation also deserves to be rejected.

25. After considering entire conspectus of the case, I am of the view that Divisional Joint Registrar has committed a glaring error in holding that complicated questions are involved in the Recovery Applications filed by the Society and that recording of evidence is necessary. Order passed by the Divisional Joint Registrar is thus unsustainable and liable to be set aside.

26. Petitions accordingly succeed. Orders dated 24 February 2022 passed by the Divisional Joint Registrar are set aside and Orders dated 23 July 2021 passed by the Deputy Registrar issuing the recovery certificates are upheld. The Writ Petitions are accordingly allowed. Rule is made absolute. There shall be no orders as to costs.

SANDEEP V. MARNE, J.