

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

WRIT PETITION NO. 3072 OF 2020

Ramesh Hanumant Kale & Anr.	...Petitioners
Versus	
Hariom Co. Operative Soc. Ltd & Ors.	...Respondents

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Mr. Yogendra Pendse, for the Petitioner.
Mr. B. S. Nayak for the Respondent No.1.
Mr. P. P. Pujari, AGP for Respondent Nos.2 to 4.

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CORAM: SANDEEP V. MARNE, J.
DATE : 31 AUGUST 2023.

ORAL ORDER:

By this petition Petitioner challenges order of the Deputy Registrar of Co-operative Societies dated 24 August 2015 as confirmed by the Divisional Joint Registrar by it's order dated 27 July 2018 as well as the order passed by the Minister. Petitioner is aggrieved by levy of monthly maintenance charges by the society, On account of Petitioner's failure to pay monthly charges from time to time, the society was required to approach the Deputy Registrar, Co-operative Societies who issued recovery certificates under provisions of Section 101 of the Maharashtra

Co-operative Societies Act, 1960 on 24 August 2015 for an amount of Rs.14,524/- and 18,277/- with interest and costs. Petitioner's revision has been rejected by the Divisional Joint Registrar. Further revision filed by the Petitioner before the Minister is held to be not maintainable.

2. Mr. Pendse learned counsel appearing for Petitioner would raise three objections to the Society's action in seeking to recover monthly amounts. Firstly he would contend that the Society has not admitted him as a member in respect of Flat No. A-8 despite execution of gift deed in his favour by his brother and that in the light of non admission as member in respect of Flat No. A-8, Petitioner is not liable to pay monthly maintenance charges of that flat. The second contention is that under the plan sanctioned by the Kalyan – Dombiwali Municipal Corporation, the premises occupied by him comprises one flat whereas the society illegally charging maintenance in respect of two flats bearing Nos. A-8 and A-9.

3. The third submission of Mr. Pendse is that in pursuance of consumer complaint filed by Petitioner against society complaining about lickages, the Consumer Forum awarded him compensation of Rs.40,000/- and the society is attempting to levy contribution of Rs.1500/- from each flat owner for satisfaction of the said amount of Rs.40,000/-. He would submit that since the compensation is awarded to the Petitioner, he cannot be made to contribute anything towards the said compensation.

3. Learned counsel appearing for Respondent Society would oppose the petition and support the order passed by the District Deputy Registrar and Divisional Joint Registrar.

4. After having considered all the three objections canvassed by Mr. Pendse I do not find any merit in the first two objections. If there is any dispute with regard to transfer of Flat No.A-7 in pursuance of gift deed executed by Petitioner's favour by his brother, the society cannot be made to suffer for non payment of monthly charges with regard to Flat No.A-8. Whether the gift deed would actually confer upon him the title in respect of flat is something which needs to be decided independently and the Petitioner will have to approach to appropriate forum. However the same cannot be a ground for not paying monthly charges in respect of Flat No.8.

5. So far second ground raised by Mr. Pendse is concerned he has placed on record copies of agreement for sale in respect of Flat No.A-8 and A-9. It appears that two flats were purchased by Petitioner and his brother by separate and distinct agreements. This is the first factor to indicate existence of two distinct flats. Secondly while executing gift deed also, both Petitioner and his brother have identified Flat No.A-8 as a distinct flat. Therefore it is difficult to believe the pretext set forth by Petitioner about flat No.A-8 and A-9 being one unit for the purpose of levy of the monthly maintenane charges.

6. So far as third objection of Mr. Pendse is concerned, I find

some merit in the same. Petitioner has been awarded compensation by Consumer Forum and cannot be made to contribute anything towards the said amount. Otherwise it would be like recovering compensation from petitioner for being paid to him. Mr. Nayak the learned counsel for Respondent Society, after taking instructions from office bearers of the Society present in the Court would fairly submit that Society will not insist on recovery of Rs.1500/- from Petitioner. The said amount alongwith interest thereof shall be deleted from the total amount recoverable from the Petitioner.

7. Accordingly Writ Petition is disposed of with a direction to the Respondent Society to delete the total amount of Rs.3000/- alongwith interest from total amount recoverable from Petitioner. Mr. Pendse would submit the Petitioner has already deposited substantial amount towards maintenance directly with the society. With the above observations Writ Petition is disposed of. Petitioner would be at liberty to adopt such remedies as may be available in law in respect of non transfer of Flat No.A-8 in his name.

SANDEEP V. MARNE, J.

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