

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

WRIT PETITION NO.10083 OF 2024

New Rubans Apartments	}	
Co-operative Housing Society Ltd.	}	
(Through Hon. Secretary)	}	
Setalvad Lane, Of Neapeans Sea Road	}	
Mumbai – 400036	}{..	Petitioner

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Versus

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|----|---|------|--------------------|
| 1. | Deputy Registrar Co-operative Societies “D” Ward, Mumbai. | } | |
| | Malhotra House, 6 th Floor, Opp. G.P.O., | } | |
| | Mumbai – 400 001. | } | |
| 2. | Mr. Rajiv Malhotra | } | |
| | Director, Reno Plast Pvt. Ltd | } | |
| | <u>Having residential address at-</u> | } | |
| | Flat No.5, | } | |
| | New Rubans Apartments CHS Ltd, | } | |
| | Setalvad Road, Of Napean Sea Road, | } | |
| | Mumbai 400 026. | } | |
| | Having office address at- | } | |
| | 4 th Floor, Malhotra House, | } | |
| | Walchand Hirachand Marg, | } | |
| | Opp. General Post Office Mumbai, | } | |
| | Borabazar Precinct, Ballard Estate, | } | |
| | Fort, Mumbai – 400001. | }{.. | Respondents |

Mr. Rishabh Jadhav with Mr. Amit Patil i/by Parinam Law Associates, Advocates for petitioner.

Mr. Jamsheed Master i/by Ms. Natasha Bhot, Advocates for respondent no.2.

Mr. N.K. Rajpurohit, AGP for the respondent-State.

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**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 25th JULY, 2024.

JUDGEMENT : (PER : A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The challenge raised in this writ petition is to the communication dated 11/03/2024 issued by the Deputy Registrar, Co-operative Societies informing the petitioner that the proceedings that had been filed under Section 154 B-29 of the Maharashtra Co-operative Societies Act, 1960 (for short, “the Act of 1960”) were being returned back to it for issuing a fresh notice to the second respondent and thereafter re-filing the same. The reason for issuing this communication is based on the written objection raised by the second respondent on 09/01/2024. In that objection, the second respondent has come up with the stand that the proceedings initiated by the Housing Society were not maintainable.

2. The Housing Society filed proceedings under Section 101 of the Act of 1960 against the second respondent seeking to recovery an amount of Rs.6,55,652/- towards arrears of maintenance and

other amounts in respect of Flat No.5 on the fifth floor of its premises. After being served in the aforesaid proceedings, the second respondent on 15/01/2024 filed an affidavit in reply opposing the said proceedings raising various grounds therein. Both parties were permitted to file their written submissions by the Deputy Registrar, Co-operative Societies. The same were accordingly filed. On 11/03/2024, the Deputy Registrar informed the Housing Society that the second respondent had sought time to file reply to the application filed under Section 101 of the Act of 1960. It was further stated that the second respondent had raised certain doubts of the said proceedings. On that basis, the Deputy Registrar, Co-operative Societies directed the Housing Society to give a fresh notice to the second respondent and thereafter file the proceedings afresh. The application as filed under Section 101 of the Act of 1960 was returned to the Housing Society.

3. While the learned counsel for the petitioner submits that the impugned communication has been issued without hearing the petitioner, the learned counsel for the second respondent submits that the petitioner can always issue a fresh notice as observed in the impugned communication and thereafter file the proceedings.

4. The proceedings in question were filed by the Housing Society under Section 101 of the Act of 1960 for recovering its dues from the second respondent. We find that it was necessary for the Deputy Registrar to have first heard the parties before proceeding to return the proceedings to the Housing Society. This is for the reason that the Deputy Registrar has on the basis of the objection raised by the second respondent proceeded to issue the impugned communication. The same could not have been done without granting an opportunity to the Housing Society. Moreover, reference in the said communication is made to an application filed under Section 154B-29 of the Act of 1960 when in fact the application filed by the Housing Society was under Section 101 of the Act of 1960. The impugned communication does cause legal prejudice to the Housing Society. On the short ground that the impugned communication dated 11/03/2024 has been issued in breach of principles of natural justice and also suffers from non-application of mind, the same is liable to be set aside. The proceedings filed under Section 101 of the Act of 1960 ought to have been adjudicated on merits instead of returning the same to the Housing Society without recording any finding whatsoever.

5. Accordingly, the following order is passed:-

i) The communication dated 11/03/2024 issued by the Deputy Registrar is set aside.

ii) The Deputy Registrar shall consider the proceedings filed under Section 101 of the said Act in accordance with law and after giving opportunity to all the parties decide the same.

All points raised in the writ petition are kept open.

6. Rule is made absolute in aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]