

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.198 OF 2024

Vilas Mestry,

Age 67 years, Occupation Business,
having address at Unit No.20, Ground Floor,
Sri. Sai Industrial Premises Coop. Society
Limited, Bldg. No.6, Jogani Industrial
Complex, V.N. Purav Marg, Chuna Bhatti,
Mumbai 400 022

... Petitioner

V/s.

1. Sri. Sai Industrial Premises Coop.

Society Limited, Building No.6,
Jogani Industrial Complex,
V.N. Purav Marg, Chuna Bhatti,
Mumbai 400 022

2. Satish Madan Shildankar, (deceased'
through legal heirs)

Smt. Neeta Satish Shildankar,
Shri Sanil Satish Shildankar,
Both r/at B-1602, 16th Floor,
Lav-kush Tower Sindhi Society,
Chembur, Mumbai – 400 071

3. State of Maharashtra,

through the Maharashtra State
Cooperative Appellate Court,
at Mumbai.

... Respondents

Mr. Vishal Pattabiraman with Mr. Jayesh Mestry and
Ms. Farheen Mustafa for the petitioner.

Mr. Niranjan Mogre for respondent No.1.

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Ms. Snehal S. Jadhav, AGP for respondent No.3-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 27, 2025

PRONOUNCED ON : DECEMBER 1, 2025

JUDGMENT:

1. The petitioner has approached this Court to challenge the Judgment and Award of the Cooperative Appellate Court. The Appellate Court has confirmed the Award of the Cooperative Court. The Cooperative Court directed the petitioner to pay an amount of Rs. 2,81,655 as on 31 March 2001 with interest at fifteen percent per annum until full recovery. The petitioner seeks to set aside these concurrent findings.

2. The relevant facts may be placed in brief. Respondent No. 1 is a housing society. It filed a dispute before the Cooperative Court stating that Unit No. 20 in its building is occupied by the petitioner. The petitioner claims to be a member of the society. The society recovers contribution from its members under different heads. These heads are described in paragraphs 5 and 7 of the dispute. The general body and the managing committee passed resolutions on 30 June 1994, 21 September 1995, 29 June 1996, and 25 January 1997 prescribing the proportion of charges recoverable from members.

3. The society stated that Opponent No. 1 did not pay the charges regularly. His outstanding dues as on 31 May 2001 amounted to Rs. 2,81,655. Opponent No. 2 has been in actual use

and possession of Unit No. 20 since 1985. The society therefore claimed that Opponent Nos. 1 and 2 were jointly and severally liable to pay the dues.

4. The legal representatives of Opponent No. 1 opposed the dispute. They stated that Opponent No. 1 was never a member of the society. According to them, it is Opponent No. 2, the present petitioner, who is in possession of Unit No. 20. They stated that Opponent No. 1 had paid all charges of the society from the beginning and the society accepted these payments till 1997.

5. Opponent No. 2 filed Suit No. 2182 of 2002 in this Court against Opponent No. 1 seeking specific performance. The suit was settled and consent terms were placed on record. Under the settlement Opponent No. 2 accepted full responsibility to pay all outstanding dues of the society including penalty and interest. The legal representatives of Opponent No. 1 therefore submitted that the society should recover its dues only from Opponent No. 2.

6. Opponent No. 2 contested the dispute by filing a written statement. He stated that the society did not provide details of property tax, maintenance charges, and sinking fund. He stated that the bye-laws of the society do not permit imposition of penalty. He contended that he is not liable to pay court fee stamps and charges of demand notices. He stated that he was always ready to pay maintenance charges. On 18 November 1997 his Advocate sent a notice to the society along with a cheque of Rs. 22,133 dated 1 April 1997. The society did not reply nor return the cheque. He stated that the society is not entitled to claim interest

when it refused to accept payment. He prayed that the dispute be dismissed.

7. The Cooperative Court passed its Judgment and Award on 13 January 2023. It directed Opponent No. 2 to pay the amount of the claim with interest. Opponent No. 2 filed an appeal. The Cooperative Appellate Court dismissed the appeal by Judgment and Award dated 31 July 2023. Aggrieved by these concurrent decisions the petitioner has filed the present writ petition.

8. Learned Advocate for the petitioner submitted that on 18 November 1997 the petitioner tendered a cheque to the society towards outgoings for the year 1997. The society neither returned the cheque nor encashed it. The dues claimed in the dispute relate to the period from 1996 to 31 March 2000. The petitioner has remained ready and willing to pay all outgoings of the premises. The society stopped accepting the payments. According to him, the society cannot claim interest when it refused to accept the amount. He submitted that after the consent terms were executed, the petitioner placed all documents before the society for transfer of Unit No. 20 in accordance with the order of the High Court. He further submitted that even on 2 April 2013 the petitioner made efforts to settle the matter. An Advocate's letter dated 2 April 2013 was issued. The society did not raise any demand or bill on the petitioner.

9. He submitted that under the Maharashtra Cooperative Societies Act, 1960 and the bye-laws, a member becomes liable to pay interest only when there is negligence or default in payment.

He submitted that the consent terms were an arrangement between Opponent No. 2 and the petitioner. According to him, Respondent No. 1 cannot claim interest from the petitioner on that basis.

10. The learned Advocate for Respondent No. 1 opposed the petition. He referred to the dispute filed before the Cooperative Court in 2001 against Opponent No. 1 for an amount of Rs. 2,81,655. This amount included penalty and interest. He referred to the consent terms executed on 30 July 2004. He submitted that Opponent No. 2, who is the petitioner, knowingly accepted all outstanding dues of the society including penalty and interest. He relied on the specific clause in the consent terms which states that the outstanding dues, penalty, and interest of the society shall be entirely borne and paid by the plaintiff alone. The plaintiff in that suit was the petitioner. He submitted that the petitioner accepted full liability after knowing the details of the claim made by Respondent No. 1. The liability included penalty and interest. He submitted that the writ petition deserves dismissal.

11. I have considered the record and the submissions of both sides. The core issue is simple. The society has raised a claim for outstanding dues from 1996 to 31 March 2000. The Cooperative Court and the Appellate Court have accepted this claim. The petitioner seeks to avoid liability mainly on two grounds. First, that the society refused to accept his payment in 1997 when he tendered a cheque. Second, that the society is not entitled to claim interest. The petitioner also relies on his correspondence and the consent terms filed in Suit No. 2182 of 2002.

12. The material on record shows that the dispute was filed in the year 2001. The society placed before the Cooperative Court a detailed statement of dues. These dues include penalty and interest. The petitioner was aware of this claim. The consent terms executed on 30 July 2004 make this position even clearer. The petitioner himself, as plaintiff in that suit, agreed to bear all outstanding dues of the society along with penalty and interest. The clause leaves no room for doubt. The petitioner accepted the liability in explicit terms.

13. The petitioner has argued that the society refused his cheque and therefore lost the right to claim interest. The cheque produced relates to outgoings only for the year 1997. The petitioner has not shown that he tendered any payment for dues of earlier or later years. He has not shown any material to explain the continuous default from 1996 to 2000. His own conduct shows that he accepted the liability in full in the consent terms. He took the benefit of the settlement in the civil suit. He cannot now turn around and repudiate the liability he voluntarily assumed.

14. The submission that interest cannot be charged under the Maharashtra Cooperative Societies Act or the bye-laws is without merit. The society had already raised its claim in the dispute. The petitioner accepted this claim in the consent terms. Once the petitioner admits liability for penalty and interest in a binding arrangement, he cannot challenge it in writ jurisdiction. The writ court will not unsettle a liability which the petitioner himself accepted with full knowledge.

15. The correspondence relied upon by the petitioner does not assist him. The letter dated 2 April 2013 only shows that he attempted to resolve the matter. It does not alter the liability already acknowledged. The society was entitled to recover its dues as determined by the Cooperative Court. Both courts below have recorded concurrent findings on facts. These findings are based on evidence. No ground is made out to upset them.

16. The scope of interference in a writ petition under Article 226 is limited. The petitioner must show breach of law or perversity of finding. The petitioner has shown none. The Cooperative Court and the Appellate Court have acted within their jurisdiction. They have applied the law correctly. There is no error apparent which calls for interference.

17. Hence, following order is passed:

- (a) The writ petition is dismissed.
- (b) The Judgment and Award dated 13 January 2023 passed by the Cooperative Court and the Judgment and Award dated 31 July 2023 passed by the Cooperative Appellate Court are upheld.
- (c) No order as to costs.
- (d) All pending applications, if any, stand disposed of.

18. At this stage, learned Advocate for the petitioner seeks stay of the order. However, for the reasons stated in the judgment, request for stay is rejected.

(AMIT BORKAR, J.)