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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6682 OF 2024

V. Mathai Easo ... Petitioner
V/s.
The District Deputy Registrar,
Cooperative Societies & Ors. ... Respondents

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GANESH
KULKARNI

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Mr. Jay Patil for the petitioner.

Mr. Kedar B. Dighe, Additional G.P. with Smt. S.D.
Chipade, AGP for respondent Nos.1 and 2-State.

Mr. Sandeep Bane with Ms. Shefali Jadhav, Mr.
Shubham Bane, Ms. Kavita Gawde, Ms. Shruti Mishra,
Mr. Devesh Naik, Mr. Ashok Yadav, Ms. Pooja Bane, and
Mr. Atharva Bane for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 3, 2025

P.C.:

1. This petition is filed by a member of a housing society who questions the proceedings started by the society under Section 154B-29 of the Maharashtra Cooperative Societies Act 1960. The society seeks to recover maintenance charges from the petitioner for the period between 1 January 2017 and January 2019. The grievance of the petitioner arises from the said demand and forms the subject matter of the present writ petition.

2. The petitioner states that the building was under redevelopment. He addressed several letters to the developer

asking for possession. The developer did not hand over possession in spite of these communications. The petitioner then filed a civil suit. The civil court granted an interim order. Only after this interim order was passed, the petitioner obtained possession in the year 2022. The petitioner submits that liability to pay maintenance begins only after possession is delivered to him. He states that the developer continued to retain possession till 2022. Therefore, if anyone was liable to pay maintenance for the earlier period, it was the developer and not the petitioner.

3. The society opposes the petition. The society states that all other members accepted possession on their own. The petitioner did not accept possession and did not make efforts to take possession. The civil suit filed by him is against the promoter. The society submits that the petitioner cannot use his own inaction to avoid liability. The society points out that other members have taken possession of their respective premises. The failure of the petitioner to do so does not relieve him from his obligation to pay maintenance to the society.

4. I have examined the orders passed by the Registrar and the Revisional Authority. The record shows that both authorities did not apply their mind to the real controversy. Proceedings under Section 154B-29 of the MCS Act require a clear finding on two foundational aspects. First, whether the promoter was ready to hand over possession to the petitioner. Second, whether the petitioner made reasonable efforts to secure such possession. These facts go to the root of the liability to pay maintenance. If the petitioner made bona fide attempts to obtain possession yet

remained unsuccessful and had to approach the civil court for relief, liability cannot be fastened on him for the period when possession was not with him. A member cannot be held responsible to pay for a service that was unavailable to him. At the same time, if the society is able to place material showing that the promoter was willing to deliver possession and the petitioner declined to accept it, the liability would commence from the date on which such willingness is established. A balanced adjudication of this nature was necessary. The authorities failed to undertake this exercise.

5. In order to reach a proper conclusion, both sides must have full opportunity to place relevant documents, correspondence, and other material that bears on the question of possession. The Registrar must assess these materials with clarity and fix responsibility based on concrete findings.

6. In view of the above, the orders passed by both authorities are set aside. The matter is remitted to respondent No. 2 for fresh consideration in accordance with law. The authority shall reassess the dispute with due regard to the issues noted above.

7. The parties shall remain present before respondent No. 2 on 15 December 2025. This date shall be treated as the date of first appearance for the remanded proceedings.

8. Respondent No. 2 shall grant the parties reasonable opportunity to produce their material and shall then decide the proceedings afresh. A reasoned order shall be passed within a period of three months from the date on which the parties appear.

9. The writ petition accordingly stands disposed of. No costs.

(AMIT BORKAR, J.)