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

WRIT PETITION NO. 10366 OF 2024

Minoof Fitter ... Petitioner

V/s.

The State of Maharashtra through. Govt
Pleader and ors ... Respondents

Mr. Som Sinha a/w Ms. Divya Vishwanath i/b Som
Sinha & Associates for the Petitioner.

Mr. Shahaji Shinde B' PNL a/w. Mr. S.L. Babar, AGP for
State.

Ms. Rukmini Khairnar i/b Mr. P.N. Joshi for Respondent
no.5

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 3, 2025

P.C.:

1. Rule. Rule is made returnable forthwith.
2. The petitioner is a member of a Co-operative Housing Society which has been placed under liquidation.
3. On 7 December 2015, respondent no.3 passed an interim order of liquidation and appointed a liquidator. The liquidator was directed to call upon the members of the Managing Committee as well as the members of the society to file their objections within one month. According to respondent no.3, since no objections were filed within the stipulated time, the interim order was confirmed and, by order dated 31 March 2016, the society was

directed to be liquidated.

4. Being aggrieved, the petitioner, as a member of the said society, filed an appeal under Section 104 of the Maharashtra Co-operative Societies Act, 1960. The Appellate Authority rejected the appeal. The petitioner thereafter preferred a revision, which also came to be dismissed by the Revisional Authority, mainly on the ground that the petitioner had failed to place on record material to establish his locus.

5. The learned Advocate for the petitioner submitted that the membership of the petitioner in the society is not in dispute. He further submitted that, at the relevant time, the petitioner was functioning as the treasurer of the society. It was argued that before passing either the interim order or the final order of liquidation, no opportunity of hearing was granted to the Managing Committee members or to the members of the society.

6. On perusal of the orders passed by the authorities under the Act, it is clear that the petitioner, being a member of the society, was entitled to file an appeal under Section 104 of the Maharashtra Co-operative Societies Act, 1960. Section 104 specifically confers the right of appeal upon the members of the society or the members of the Managing Committee of a society placed under liquidation. The petitioner, therefore, fell within the category of persons legally entitled to challenge the liquidation order before the Appellate Authority.

7. On further perusal of the interim order of liquidation dated 7 December 2015 and the final order of liquidation dated 31 March

2016, along with the Roznama produced on record, it becomes evident that notices of such proceedings do not appear to have been served either on the Managing Committee members or upon the members of the society. The record does not disclose any credible material to show that the members were duly informed or afforded an opportunity to raise their objections. In law, a member of a co-operative housing society, in his own right, is entitled to file an appeal under Section 104 of the MCS Act, even if he did not raise objections during the liquidation process, provided he had no knowledge of such orders. If the interim or final orders of liquidation were passed without issuing notice or without bringing the proceedings to the knowledge of the members, then rejection of the petitioner's appeal on the ground of delay could not be legally sustained. The statutory right of appeal could not be curtailed by attributing laches when the delay itself arose from lack of knowledge of the orders.

8. In my considered opinion, the explanation furnished by the petitioner for delay in filing the appeal constitutes sufficient cause within the meaning of law. The authorities below failed to appreciate that when an order affecting the rights of members is passed without notice, principles of natural justice require that a liberal approach be adopted in condoning delay, so that the matter is decided on merits rather than on technicalities.

9. Insofar as respondent no.5 is concerned, it is not in dispute that he is neither a member of the society nor are his legal rights affected by the process of liquidation. He, therefore, has no locus to participate in the proceedings. In such circumstances, service of

notice upon him in the present petition was not necessary. Accordingly, Rule is made absolute in terms of prayer clause (a).

10. Consequently, the impugned orders passed by the Appellate Authority and Revisional Authority cannot be sustained. The proceedings are remanded back to the Appellate Authority – respondent no.2, who shall decide the appeal filed by the petitioner on its own merits and in accordance with law. The Appellate Authority shall afford due opportunity of hearing to all concerned parties and pass a reasoned order within a reasonable period, preferably within three months from the date of receipt of this order.

(AMIT BORKAR, J.)