

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

CIVIL WRIT PETITION NO. 4089 OF 2025

George Alex Fernandes & Anr.

..Petitioners

Versus

The Chairman/Secretary, Alankar Tower Co-op.
Hsg. Soc. & Ors.

..Respondents

Mr. Deepak Jamsandekar for Petitioners.

Ms. M. S. Bane, AGP for State/Respondent.

CORAM : AMIT BORKAR, J.

DATE : 05 DECEMBER 2025

PC :

1. Pursuant to the order of this Court dated 14 November 2025, learned counsel for the petitioners issued notice to Respondent No. 1 society. The notice required the society to place on record its explanation regarding the defence set out by the petitioners in paragraph 9B of their reply.

2. The petitioners have filed an affidavit of service through their advocate. The affidavit states that Respondent No. 1 received the notice. It further records that the envelope was opened, its contents were seen, and thereafter the envelope was stapled and returned to the advocate for the petitioners. The affidavit dated 1 December 2025 is taken on record and marked X for identification. On perusal of the affidavit of service, I am satisfied that Respondent No. 1 stands duly served. Respondent No. 1 has not remained present despite service.

3. The petition arises from proceedings instituted under Section 154B-29 of the Maharashtra Cooperative Societies Act by Respondent No. 1 society for recovery of maintenance charges from the petitioners.

4. The petitioners opposed the application filed by Respondent No. 1 and submitted written arguments. A specific defence was raised in paragraph 11(b) of the written arguments. Paragraph 11(b) reads as follows.

“There was leakage in the flat of opponent for which opponent raised grievances to society for ceiling repairs, outer wall/pipe line leakage, repair/plaster/painting of ceiling, leakage in bedroom, damages caused to ceiling in bathroom etc. However at that time the office bearers informed opponent to carry out repairs in his flat for which the society will adjust the amount in maintenance bill. Accordingly the opponent carried certain work by making expenses from his pocket. At that time, the society raised the bill No.3591 showing outstanding of an amount of Rs.1,56,731/- due upto March 2016. However as per commitment and as agreed the opponent paid an amount of Rs.1,17,771/- to society towards said bill No.3591 for which the society issued receipt on 31/3/2016 thereby disclosing full payment of bill No.3591. The opponent states that the subject of maintenance charges was resolved in the month of March 2016 on the part of society and this opponent. Copy of society's bill of March 2016 alongwith payment receipt dated 31/3/2016 issued by society is already filed on record alongwith written statement.”

5. The record shows that the petitioners placed a clear and specific defence before the authority. This defence was not a mere formality. It went to the root of the society's claim and required a reasoned adjudication. Both the Deputy Registrar and the Divisional Joint Registrar referred to the existence of this defence. However, neither authority examined its substance.

6. A statutory authority is expected to deal with each material contention raised before it. When an authority ignores a vital defence that may affect the liability itself, the order loses its foundation. The grievance of the petitioners therefore stands unaddressed. Such an omission strikes at the fairness of the decision making process.

7. In these circumstances, the impugned orders cannot stand in law. They suffer from non consideration of a material plea. The orders deserve to be set aside so that the competent authority may examine the defence in accordance with law. I therefore pass the following order.

O R D E R.

i. The impugned order dated 20 September 2024 in Revision Application No. 87 of 2023 and the order dated 19 April 2023 passed by Respondent No. 2 are quashed and set aside.

ii. The proceedings are remitted to

Respondent No. 2 for a fresh adjudication on the contention raised in paragraph 11(b) of the written arguments submitted by the petitioners.

iii. Respondent No. 2 shall grant due opportunity of hearing to both sides and shall record findings on the defence raised by the petitioners.

iv. Respondent No. 2 shall conclude the proceedings under Section 154B-29 of the Maharashtra Cooperative Societies Act within a period of three months from the date on which the parties appear before him.

v. The petition is disposed of.

(AMIT BORKAR, J.)