

Shabnoor

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

WRIT PETITION NO.5254 OF 2025

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Kunj Bihari Cooperative
Housing Society Limited
V/s.

... Petitioner

Mamta Prithyani & Ors.

... Respondents

Mr. Pankaj Pandey a/w Mr. Smit K. Nagda, for the
petitioner.

Mr. Sahil Mahajan, for respondent No.2.

Ms. Tanu N. Bhatia, AGP, for State – respondent Nos.4
to 6.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 9, 2025

P.C.:

1. The Housing Society has approached this Court challenging the order passed by the Registrar refusing to issue a recovery certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960. The Registrar rejected the Society's claim mainly on the ground that the amounts shown in the Society's accounts were not supported by material evidence. The Revisional Authority, while considering the matter, did not properly examine this aspect and dismissed the revision only by referring to the personal status of Respondent No.1 and her husband in relation to their marriage. Such a consideration is irrelevant to the issue under Section 101, which pertains solely to recovery of dues legally recoverable from a member. The authority was expected to

confine itself to the existence of a monetary liability and the sufficiency of supporting records. The Registrar, while exercising powers under Section 101, is bound to follow the procedure prescribed under Rule 86 of the Maharashtra Cooperative Societies Rules, 1961. This includes issuing notice, giving both sides an opportunity to be heard, and adjudicating upon the actual amount due after considering documentary and oral evidence placed on record. The Registrar cannot reject the application only on the ground of insufficiency of proof without first conducting a proper enquiry into the correctness of the claim.

2. The scope and parameters of such an enquiry under Section 101 have been explained by this Court in earlier decisions. The Registrar's role is not that of a mere accountant but of a statutory authority who must determine, upon evidence, whether the sum claimed is indeed due from the member to the Society. He must verify the basis of the claim, examine receipts, ledgers, maintenance bills, and resolutions of the Society, and determine whether the demand is in accordance with the Society's bye-laws. Once the Registrar concludes that a certain amount is due, he must issue a recovery certificate accordingly. The authority cannot rely on extraneous considerations, nor can it refuse to decide on the pretext that accounts are disputed. Such a view would defeat the very purpose of Section 101, which provides a speedy remedy to cooperative societies for recovery of their dues.

3. In view of these settled principles, the order passed by the Registrar refusing to issue a recovery certificate cannot be sustained. The matter must therefore be remitted for fresh enquiry

under Section 101 of the MCS Act. The Assistant Registrar shall, after giving both parties a fair opportunity of hearing and allowing them to produce relevant evidence, determine the amount, if any, legally recoverable from Respondent No.1. The enquiry shall be conducted strictly in accordance with Rule 86 and guided by judicial precedents of this Court interpreting the said provision.

4. The parties shall appear before the Deputy Registrar on 3rd November 2025. Upon their appearance, the Deputy Registrar shall take the matter on board and proceed to decide the same within a period of three weeks thereafter. The authority shall ensure that both sides are allowed to present all documentary and oral evidence they wish to rely upon before arriving at a reasoned conclusion.

5. The writ petition is accordingly disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)