

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10853 OF 2025

Om Prakash Mittal

... Petitioner

V/s.

State of Maharashtra & Anr.

... Respondents

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Mr. Niranjan Mogre for the petitioner.

Mr. P.V. Nelson Rajan, AGP for respondent No.1-State.

Mr. Prasad Pathare i/by Mr. Rajesh Bindra for
respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2025

P.C.:

1. The writ petition arises from recovery proceedings initiated by a housing society under Section 101 of the Maharashtra Cooperative Societies Act, 1960. The society invoked the summary machinery for recovery of maintenance dues. The scope of such proceedings is limited. The authority can act only within the bounds of the claim as presented on record.

2. From the material placed before the Court, it appears that the society seeks to recover dues for two distinct periods. The first period is from the year 1999 till 2011. The second period is from the year 2012 till 2025. These two periods are separated by time and by the nature of the claim pursued before the authority.

3. The petitioner asserts that he has been regularly making payments towards maintenance. He claims that the actual outstanding dues are far less than what the society alleges. According to him, an amount of Rs. 10,94,725 has been paid from 20 November 1999 till the end of June 2025. The society disputes this assertion. It contends that the statement produced by the petitioner does not reflect the correct position of accounts and does not capture the true extent of the dues.

4. By order dated 7 August 2025, this Court issued notice and called for clarification on a specific and narrow issue. The inquiry was directed to ascertain whether, after remand, the recovery proceedings were formally amended to include the subsequent period, or whether the authorities proceeded without such amendment.

5. The record reveals a clear factual position. After remand, the original recovery application was never amended. The society relies on the claim affidavit to contend that amounts post 2011 were included and that court fees were paid accordingly. That may explain the intention of the society. It does not cure the defect. The foundational pleading remained unchanged. Despite this, the authorities proceeded to adjudicate the claim up to the year 2023, treating the application as if it stood amended. That assumption is contrary to the record.

6. Recovery proceedings under Section 101 must strictly follow the claim as instituted. Rights and liabilities cannot be expanded by inference or implication. In these circumstances, it would be

fair and lawful to confine the present proceedings to the period for which the claim was actually made, namely from 1999 to 2011. For the subsequent period, the law provides a separate and effective remedy. The society must take recourse to a fresh application, either under Section 101 or under Section 154 B29, in accordance with law.

7. In view of the above discussion, the following order is passed.

8. The impugned order dated 7 March 2025 is quashed and set aside.

(a) The proceedings are remitted to the Deputy Registrar, Cooperative Societies, K West Ward, Mumbai, for adjudication of Appeal No. 9 of 2012, which in substance is an application under Section 101.

(b) The Deputy Registrar shall grant full opportunity of hearing to both parties and shall adjudicate the dues of the society strictly for the period from 1999 to 2011. The exercise shall be completed within six weeks from the date of appearance of the parties.

(c) The parties shall remain present before the Deputy Registrar on 12 January 2026.

(d) It shall be open to the society to file a fresh application for recovery of maintenance dues from the year 2012 onwards.

(e) If such an application is filed, the Deputy Registrar shall decide the same within three months from the date of appearance of the petitioner in those proceedings.

9. All contentions of both parties are expressly kept open.

10. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)