

MPBalekar

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

WRIT PETITION NO. 3339 OF 2024

New Sea Queen Co-operative
Housing Society Ltd. ... Petitioner
V/s.
V. Kaur and Ors. ... Respondents

Mr. Shyamsunder Solanke i/by PNP Associates for the
petitioner.

Mr. Y.D. Patil, AGP, for the State – Respondent Nos. 2 &
3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 27, 2026

P.C.:

1. Challenge in present writ petition is arising from the order passed by the Revisional Authority in Revision Application No. 17 of 2020, whereby the Revisional Authority has confirmed earlier judgment and order dated 20 August 2021 passed by respondent No. 3, and by such confirmation the application preferred by the petitioner society under Section 154 of the Maharashtra Co-operative Societies Act, 1960 came to be rejected.

2. It is also noted that respondent No. 1, though served in present petition, has failed to appear and contest the matter before this Court.

3. It appears from the record that the petitioner society had instituted proceedings for recovery of alleged dues for the period

from December 2010 to March 2015. Such claim was stated to be founded on account extract maintained by the society and other supporting documents. In matters of maintenance charges and society dues, account extract regularly maintained in ordinary course carries material value, subject of course to verification and objection by opposite side. A housing society functions on collective contribution of members, and therefore non-payment by one member may affect common administration. If documentary record is produced showing arrears, the authority is expected to examine same carefully instead of brushing aside the claim in summary manner.

4. Defence raised on behalf of respondent No. 1 is that she had already sold the flat in question, namely Flat No. 302, sometime in the year 2014, and therefore she cannot be made liable for dues claimed thereafter. It was also contended that the society had not furnished proper particulars of dues, break-up of charges, or basis of demand. On that foundation, dismissal of the application was prayed.

5. The First Authority, without properly considering the account extract and documents produced by the petitioner society, appears to have accepted the defence raised on behalf of respondent No. 1. If statutory authority discards documentary material without analysis, the decision suffers from non-application of mind. An authority deciding monetary liability must compare claim statement, period of dues, membership status, transfer documents if any, and objections of respondent. Acceptance of defence, without discussion as to how liability ceased or why accounts are

unreliable, cannot be sustained.

6. This Court has already held in earlier matters that while adjudicating proceedings for grant of certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960, the Registrar is required to follow procedure contemplated under Rule 86 of the Maharashtra Co-operative Societies Rules, 1961. Said procedure ensures notice, opportunity, examination of claim, and adjudication before recovery certificate is issued. In present case, it appears that the impugned order came to be passed without adherence to said Rule 86. Further, the Revisional Authority instead of independently examining legality of such defect has mechanically confirmed the order below. Revisional jurisdiction exists to correct errors of procedure and law. Mere endorsement of subordinate order defeats purpose of revision.

7. In my considered opinion, therefore, the proper course would be to remit the proceedings back for fresh decision. This Court ordinarily does not undertake accounting exercise or factual adjudication where statutory forum is available and material requires appreciation. Consequently, the impugned judgment and order dated 16 February 2016 passed by respondent No. 2, as also the order dated 20 August 2021 passed by respondent No. 3 in Revision Application No. 17 of 2020, deserve to be quashed and set aside. Remand would balance equities of both sides, since neither party would be prejudiced and both would receive fresh opportunity.

8. Application No. 1 of 2015-2016 is accordingly restored to the

file of respondent No. 2. Respondent No. 2 shall, after granting fair and effective opportunity of hearing to both sides, decide the matter afresh on its own merits and in accordance with law.

9. It shall be open for the petitioner society to place account extracts, resolutions, demand notices, transfer records, and any other supporting documents. It shall equally be open for respondent No. 1 to produce proof of transfer of membership, payment receipts, objections to accounts, or any other relevant material. After considering entire record, respondent No. 2 shall pass a reasoned order dealing with material submissions raised by the parties.

10. Since the dispute pertains to dues of old period and proceedings are pending for considerable time, respondent No. 2 shall make endeavour to decide the restored application expeditiously and in any case within three months from the date of production of authenticated copy of this order before said authority. No unnecessary adjournment shall be granted to either side.

11. In view of the above discussion and directions, the writ petition stands disposed of in aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)