

Shabnoor

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

WRIT PETITION NO.12557 OF 2025

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Nalin Ramesh Chavan & Anr.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Shekhar Jagtap a/w Sairuchita Chowdhary i/b J
Shekhar Associates, for the Petitioners.

Mr. Bapusaheb B. Dahiphale, AGP, for the State –
Respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 6, 2026

ORAL JUDGMENT:

1. The present petition calls in question the certificate issued by the Assistant Registrar in exercise of powers under Section 101 of the Maharashtra Cooperative Societies Act, 1960. The petitioners contend that the impugned certificate has been issued in breach of the principles of natural justice. On this basis, it is urged that the existence of an alternative statutory remedy of revision under Section 154 of the MCS Act does not bar the exercise of writ jurisdiction. In support of this submission, reliance is placed on the decision of the Division Bench in *Sandeep Polymers Pvt. Ltd. and others versus State of Maharashtra and others*, reported in 2010 (7) *Mh.L.J.* 538, as well as the decision of the Coordinate Bench in *Sonia Bhalchandra Godase and others versus State of Maharashtra and others*, reported in 2025 SCC OnLine Bom 4169.

2. It is further submitted that the procedure laid down under Rules 86(a) to 86(f) is mandatory in nature. Any deviation from the said procedure vitiates the proceedings and renders the impugned order void in law. The petitioners point out that in comparable factual situations, this Court, both at the level of the Division Bench and the Coordinate Bench, has entertained writ petitions despite the availability of an alternate remedy. On the same reasoning, it is contended that the present petition also warrants consideration on merits.

3. The law on when a High Court should entertain a writ petition under Articles 226 and 227 is clear and settled. The general rule is simple. When a statute provides an effective and adequate remedy, the High Court should not be the first forum to be approached. This rule exists for a reason. The legislature creates a complete mechanism under a statute to deal with disputes arising under it. That mechanism must ordinarily be respected.

4. The Supreme Court examined this issue in detail in *Chhabil Dass Agarwal versus Commissioner of Income Tax and others*, reported in (2014) 1 SCC 603. In that case, the Court considered whether a writ petition should be entertained when the law itself provides a remedy by way of appeal or revision. The Supreme Court held that writ jurisdiction is discretionary. It is not meant to bypass statutory remedies as a matter of course. If a person has a clear, effective, and adequate remedy under the statute, the High Court should normally refuse to entertain the writ petition.

5. At the same time, the Supreme Court also clarified that this rule is not absolute. The Court recognised well defined exceptions. A writ petition can still be entertained where the action complained of is taken without jurisdiction, where there is a clear violation of principles of natural justice, or where the vires of a statute is under challenge. These exceptions are not based on sympathy or convenience. They are rooted in fairness and legality.

6. Thus, the decision in *Chhabil Dass Agarwal* lays down a balanced approach. It respects statutory remedies while preserving the constitutional role of the High Court. The judgment makes it clear that the High Court must first examine the nature of the grievance. If the grievance falls within the recognised exceptions, writ jurisdiction can be exercised. If not, the party must be directed to avail the remedy provided by law.

7. The Supreme Court in *State of U.P. versus Sudhir Kumar Singh*, reported in AIR 2020 SC 5215, examined how writ jurisdiction should be exercised when breach of natural justice is alleged. The Court did not accept the argument that every procedural lapse automatically vitiates the action. It made a clear and practical distinction between cases where no opportunity of hearing is given and cases where an opportunity is given but is alleged to be inadequate. The Court held that where a person is completely denied an opportunity of hearing, the breach goes to the root of the matter. Such action strikes at fairness itself. In such cases, prejudice is presumed. The Court need not search for further proof of harm. The denial itself is sufficient to invite judicial interference.

8. However, the position is different where some opportunity of hearing is given. In such cases, the Court must examine whether the opportunity was meaningful and whether any real prejudice was caused. The Court made it clear that the principles of natural justice are not empty formalities. They exist to ensure fairness. If the affected party had notice of the action, knew the case against him, and had a reasonable chance to respond, then a mere procedural irregularity will not invalidate the decision.

9. The Supreme Court further held that the doctrine of prejudice plays a central role. A person alleging breach of natural justice must show that the lapse has caused real injustice. Courts should not interfere on technical grounds alone. Judicial review must focus on substance and not form.

10. Thus, *Sudhir Kumar Singh* lays down a clear test. Total denial of hearing justifies interference. An imperfect hearing requires proof of prejudice. This distinction guides the Court in deciding whether writ jurisdiction should be exercised in cases alleging violation of natural justice.

11. In the context of Section 154(2A) of the Maharashtra Cooperative Societies Act, the Supreme Court examined attempts made by borrowers to avoid the mandatory deposit requirement by resorting to other legal routes. This issue was considered in detail in *Arun B. Khanjire versus Ichalkaranji Urban Cooperative Bank Limited*, reported in (2009) 2 SCC 187. In that case, the Supreme Court analysed the entire scheme of Section 154. The Court noted that sub section (2A) was introduced with a clear object. The

legislature intended that a borrower who challenges recovery proceedings must first deposit the prescribed amount. This condition was imposed to prevent frivolous challenges and to ensure seriousness in invoking the revisional remedy.

12. The Supreme Court found that borrowers were attempting to defeat this requirement by adopting indirect methods. Instead of filing a revision under Section 154 and complying with the deposit condition, they were approaching other forums or invoking writ jurisdiction. The Court held that such attempts cannot be permitted. What the law requires to be done directly cannot be allowed to be done indirectly.

13. The Supreme Court made it clear that Section 154 must be read as a complete code. Once the statute mandates a deposit as a condition precedent, that requirement cannot be diluted by clever drafting or by choosing an alternate procedural route. Allowing such bypass would defeat the very purpose of the provision.

14. Thus, the decision in *Arun B. Khanjire* firmly establishes that the mandatory deposit under Section 154(2A) is not a mere formality. It is a substantive condition imposed by the legislature. Courts must be cautious not to encourage methods that undermine this statutory requirement.

15. In the present case, the petitioners claim that Rule 86 has been breached and that they could not remain present on the date of hearing because of a death in the family. These facts, even if accepted at face value, do not make out a case where no opportunity of hearing was given at all. The record shows that the

proceedings were initiated, and a hearing was fixed. Therefore, the situation is not one of total denial of hearing. At the highest, it may amount to a grievance that the opportunity was not properly availed or was not effective due to personal circumstances.

16. Such a plea stands on a different footing in law. As held by the Supreme Court, absence of a party on the date of hearing, even for genuine reasons, does not automatically establish breach of natural justice. The real question is whether the authority acted without notice or without granting any chance to be heard. That is not the case here. Whether the authority ought to have granted another date, or whether the explanation offered was sufficient, requires examination of facts and records. This exercise cannot be undertaken in writ jurisdiction at the first instance. It squarely falls within the domain of the Revisional Authority under the Act.

17. Further, the allegation of breach of Rule 86 cannot be decided merely on assertions. Rule 86 prescribes a procedure, and whether that procedure was followed depends upon factual aspects such as service of notice, dates of hearing, conduct of parties, and material on record. This involves a mixed question of law and fact. Such issues are best examined by the statutory authority vested with revisional powers, which can call for records and assess the correctness of the procedure followed.

18. When the statute provides an effective remedy under Section 154 of the MCS Act, and when the grievance raised requires factual adjudication, this Court need not exercise writ jurisdiction. Entertaining the writ petition at this stage would amount to

bypassing the statutory mechanism. The petitioners must first approach the Revisional Authority, which is competent to examine both the factual and legal aspects of the dispute. Hence, the writ petition does not warrant interference at this stage.

19. However, all questions raised by the petitioner on merits are kept open to be agitated before the Revisional Authority.

20. The present writ petition stands disposed of.

21. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)