

Shabnoor

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

WRIT PETITION NO.3877 OF 2016

**SHABNOOR
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The New Poornima Apartments CHS
Ltd.

... Petitioner

V/s.

The Divisional Joint Registrar,
Cooperative Societies & Ors.

... Respondents

**WITH
INTERIM APPLICATION NO.656 OF 2026
IN
WRIT PETITION NO.3877 OF 2016**

Pratibha M. Shah & Anr.

... Applicant

In the matter between :

The New Poornima Apartments CHS
Ltd.

... Petitioner

V/s.

The Divisional Joint Registrar,
Cooperative Societies & Ors.

... Respondents

Mr. N. N. Bhadrashete, for the Petitioner.

Mr. Y. D. Patil, AGP, for the State – Respondent Nos.1
and 2.

Mr. Mayur Khandeparkar a/w Ms. Nikita Mishra, Ms.
Azraa Millwalla & Ms. Feroza Bharucha, i/b
Rashmikant & Partners, for Respondent Nos. 3 & 4.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 10, 2026

JUDGMENT:

1. The present petition emanates from proceedings initiated under Section 22(2) of the Maharashtra Co-operative Societies Act,

1960. By the orders impugned herein, the Authorities constituted under the said Act have declared Respondent Nos. 3 and 4 to be deemed members of the petitioner society.

2. The material facts, in brief, are that Late Mahendra V. Shah was a developer by profession and had constructed the building in which the petitioner society stands registered. He was admitted as a member of the petitioner society in respect of Flat D-Mezzanine admeasuring 256 sq. ft., upper basement admeasuring 8800 sq. ft., lower basement admeasuring 2100 sq. ft., and premises admeasuring 1920 sq. ft. on the ground floor together with a separate basement admeasuring 976 sq. ft., in the building known as New Poornima Apartment, situated at 23, Dr. G. D. Deshmukh Marg, Mumbai 400 026.

3. Late Mahendra V. Shah expired on 19 September 2001. He was survived by Respondent Nos. 3 and 4, being his mother and daughter respectively. It is the case of the petitioner society that Respondent Nos. 3 and 4 failed to discharge the liability towards maintenance charges payable to the society. On that premise, the petitioner instituted Dispute No. CC-II/315 of 2007 before the Co-operative Court seeking recovery of the alleged outstanding dues.

4. On 3 February 2012, Respondent Nos. 3 and 4 submitted an application seeking membership of the petitioner society and tendered two cheques of Rs. 100 each towards entrance fees. The petitioner society did not convey any decision on the said application within the statutory period of sixty days as contemplated under the Act. Consequently, on 25 June 2012,

Respondent Nos. 3 and 4 preferred an appeal before Respondent No. 2 under Section 22(2) of the MCS Act seeking a declaration that they be treated as deemed members of the petitioner society.

5. By order dated 19 December 2012, Respondent No. 2 allowed the appeal and declared Respondent Nos. 3 and 4 as deemed members of the petitioner society. The petitioner challenged the said order by filing Revision Application No. 673 of 2012. The Revisional Authority, by order dated 12 September 2013, dismissed the revision application. Being aggrieved by the concurrent findings recorded by the Authorities under the Act, the petitioner has instituted the present writ petition.

6. Learned counsel appearing for the petitioner submitted that the Authorities have committed a jurisdictional error in granting deemed membership despite substantial arrears of society dues, allegedly outstanding since 1984, remaining unpaid by the deceased member and thereafter by Respondent Nos. 3 and 4. It was further contended that the application for membership was submitted nearly eleven years after the demise of the original member and was thus belated. Reliance was placed on Bye-law No. 37, which obligates the society to invite claims and objections by public notice and requires the legal heirs to submit an application in the prescribed form along with requisite documents. According to the petitioner, the application submitted by Respondent Nos. 3 and 4 was incomplete and not accompanied by the mandatory documents.

7. It was further submitted that in the absence of strict compliance with Rule 19 of the Maharashtra Co-operative Societies Rules, 1961, the statutory fiction of deemed membership under Section 22(2) could not have been invoked. On these grounds, it was urged that the impugned orders suffer from illegality and are liable to be set aside.

8. In opposition, learned counsel appearing for Respondent Nos. 3 and 4 drew attention to the membership application, which disclosed payment of entrance fees of Rs. 100 each and specifically stated that Respondent Nos. 3 and 4 were the only legal heirs of the deceased member. It was submitted that there exists no inter se dispute among the legal heirs. In such circumstances, execution of an indemnity bond or filing of any additional affidavit, as contemplated under Bye-law No. 37, was not warranted.

9. It was further submitted that the eligibility of Respondent Nos. 3 and 4 to be admitted as members is not in dispute. The issue relating to alleged outstanding dues is the subject matter of adjudication before the Co-operative Court and cannot be a ground to deny membership. According to the respondents, all requisite documents accompanied the application and the Authorities under the Act have rightly exercised their powers in declaring Respondent Nos. 3 and 4 as deemed members. It was therefore submitted that the petition is devoid of merit and deserves dismissal.

Analysis:

10. After hearing both sides and examining the record, I dismiss

the petition for the reasons explained below.

11. The petitioner stresses the near eleven year gap between the death of the original member and the heirs' application. Delay alone does not defeat a valid claim to membership. The law under Section 22(2) permits an applicant to seek relief where the society fails to decide within the statutory period. The competence to apply does not vanish with time. The bye-laws require notice to invite claims and objections where there is reason to do so. The record shows no effective exercise by the society of the bye-law machinery prior to the appeal. Where the society sits silent and fails to decide, the statutory remedy under Section 22(2) remains open to the applicant despite delay. The competent authority acted within that statutory framework. The delay therefore does not, by itself, justify setting aside the declaration of deemed membership.

12. Counsel for the petitioner says the application lacked mandatory documents and violated Rule 19 of the Maharashtra Co-operative Societies Rules, 1961 and Bye-law No. 37. The record shows the applicants tendered the entrance fees and identified themselves as the only legal heirs. The principal purpose of the documentary requirements is to secure proof and to guard against competing claims. The competent authority has power to examine the application and to require further proof if needed. The authority's decision shows it considered the matter and found no inter se dispute among heirs. Absent a finding of fraud or palpable misrepresentation, the absence of certain documents on the initial application is not a ground to nullify the authority's exercise of jurisdiction.

13. The petitioner says the original member owed substantial dues from as far back as 1984 and that the heirs did not clear those dues before being declared members. The record shows the dispute over dues is the subject of a pending proceeding in the Co-operative Court; Dispute No. CC-II/315 of 2007 is on file. A pending adjudication on dues does not automatically bar admission as a member. Membership confers rights and duties. Declaring someone a member does not wipe out or extinguish an existing claim for arrears. The society retains its right to pursue recovery through appropriate legal process. To allow the society to deny membership solely on the ground that recovery proceedings are pending would not be permissible prior to insertion of Chapter VIII-B in the Act. The competent authority correctly left the question of dues to the forum where it properly belongs. That approach preserves both the society's right to recover and the applicant's right to membership.

14. The petitioner frames the issue as jurisdictional error and seeks judicial interference. Judicial review of administrative or quasi-judicial acts under a cooperative statute follows established principles. Courts must intervene where the decision is illegal, arbitrary, mala fide, or suffers from perversity. Courts must not substitute their view for that of the competent authority merely because they might have reached a different conclusion. Here, the record shows the applicants applied. The society failed to decide within sixty days. The applicants appealed. The competent authority heard the parties and recorded reasons. There is no record of fraud, mala fides, or perversity in the authority's

findings. On the material before this court, the authority applied the law to the facts and reached a reasoned conclusion. That conclusion falls within the range of permissible outcomes. Interference is therefore unwarranted. The petition does not disclose any error of law, perversity, or mala fides that would justify interference.

15. The petition therefore is dismissed.

16. The society's rights to pursue recovery of alleged dues remain intact and unaffected by this order.

17. No order as to costs.

18. In view of the dismissal of the writ petition, the interim application stands disposed of as such.

(AMIT BORKAR, J.)