



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

WRIT PETITION NO.8044 OF 2025

WITH

WRIT PETITION NO.8045 OF 2025

WITH

WRIT PETITION NO.8155 OF 2025

WITH

WRIT PETITION NO.8046 OF 2025

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ATUL GANESH
KULKARNI
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1. **Aspandiar Rashid Irani,**
Age 96 years, Occu.: Business
2. **Gustad Rashid Irani,**
Age 86 years, Occu.: Business
Both residing at Irani Baug,
Pokhran Road No.1, Jekegram,
Thane (West) – 400 606

V/s.

1. **Pasayadan Cooperative Housing Society Limited**, through it's Secretary Pabitra K. Pradhan, Final Plot No.347, T.P.S., Thane No.1, Sant Dnyaneshwar Path, Panchpakhadi, Thane (West) 400 602
2. **The Deputy Registrar of Cooperative Societies**, Thane City, 1st Floor, Gaodevi Market, Thane (West) 400 602
3. **Divisional Joint Registrar of Coop. Societies**, Konkan Division, Konkan Bhavan, 3rd Floor, Room No.308, Belapur, Navi Mumbai 400 614

4. Ujjvala C. Jadhav,

Recovery and Sale Officer attached
to the Thane District Coop. Housing
Societies Federation Limited,
101-103, 1st Floor, Vilasini Building,
Shivaji Path, Thane West 400 601

... Respondent

Mr. A.R. Gole for the petitioners.

Mr. N.N. Bhadrashete i/by Ms. Priyanka Bhadrashete
for respondent No.1-Society.

Smt. P.J. Gavhane, AGP for State in WP/8044/2025.

Smt. D.S. Deshmukh, AGP for State in WP/8045/2025.

Smt. M.S. Shrivastav, AGP for State in WP/8155/2025.

Mr. A.R. Deolekar, AGP for State in WP/8046/2025.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 5, 2026

DATED : JANUARY 16, 2026

JUDGMENT:

1. As the questions of law and fact arising in all these writ petitions are identical, it is appropriate to decide all the writ petitions together by a common Judgment and Order.

2. The facts necessary for deciding this group of writ petitions are taken from Writ Petition No. 8045 of 2025. The petitioners state that on 26 September 1996, they entered into an unregistered development agreement with one P and M Associates. Under the said agreement, the agreed consideration was four flats on the fourth floor, which was later changed to the fifth floor. After the construction was completed, respondent No. 1 society came to

be registered on 18 May 2005. In terms of the development agreement, the petitioners were put in possession of four flats on the fifth floor. It is the case of the petitioners that no registered agreement was ever executed in their favour. It is further their case that after they were put in possession, the society neither issued maintenance bills nor raised any demand for maintenance charges from them.

3. On 29 March 2023, the society issued a demand notice calling upon the petitioners to pay arrears of maintenance from the year 2005. As the said amount was not paid, the society, on 27 September 2024, filed four applications under Section 154B-29 of the Maharashtra Cooperative Societies Act, 1960 for recovery of alleged maintenance dues along with service charges.

4. The petitioners filed their reply on 29 November 2023. They raised a specific objection of limitation and contended that, in view of the provisions of the Limitation Act read with Section 92(2) of the MCS Act, the recovery applications were clearly barred by limitation. They also contended that they are not members of the society and, therefore, no recovery proceedings under Section 154B-29 could be initiated against them. It was further contended that prior to the amendment of the year 2019, by which a separate chapter for housing societies was introduced, the earlier provisions of Section 101 of the MCS Act could not have been invoked against the petitioners. It was also pointed out that there was no resolution of the society authorising initiation of recovery proceedings.

5. The Deputy Registrar, by order dated 15 March 2024, rejected all the defences raised by the petitioners and issued four recovery certificates against them.

6. Aggrieved by the order passed under Section 154B-29 of the MCS Act, the petitioners preferred revision applications and, as required, deposited 50 percent of the alleged dues before the revisional authority. The revisional authority, by the impugned order dated 28 April 2025, dismissed the revision applications. Consequently, the petitioners have approached this Court by filing the present writ petitions.

7. Mr. Gole, Learned Advocate appearing for the petitioners, submitted that the applications filed by the society in the year 2023 seek recovery of arrears from the year 2005 without furnishing any proper calculation or breakup indicating the relevant period. He submitted that such applications are clearly barred by the law of limitation. He contended that the Registrar exercising powers under Section 154B-29 of the MCS Act acts as a Court within the meaning of Section 156(2) of the said Act. Therefore, by virtue of Article 137 of the Limitation Act, 1963, a recovery application can be entertained only within three years from the date of default. He further submitted that even if it is assumed that the society had issued bills and that dues accrued on a monthly or quarterly basis, the same cannot be treated as a continuing wrong. According to him, the cause of action arises only when a bill is issued and payment is not made. He also submitted that though the petitioners were put in possession of the flats by the developer in May 2007, they were never admitted as

members of the society and were never treated as such.

8. Drawing attention to the provisions of the MCS Act as they stood prior to the amendment of 2019, learned counsel submitted that Section 101, as applicable to housing societies at the relevant time, restricted recovery proceedings only to arrears payable by members. He submitted that after the 2019 amendment, the expression "dues" has been defined under Section 154B-1(12) to mean amounts payable by a member or flat owner and demanded by the society by issuing a bill or written notice. He pointed out that the term "flat owner" is not defined under the MCS Act and, therefore, reference must be made to the Maharashtra Ownership Flats Act, 1963. Under MOFA, a flat owner means a person who has purchased a flat under a duly stamped and registered agreement. He submitted that in the absence of a registered agreement as mandated under Section 4 of MOFA, the petitioners cannot be treated as purchasers of the flats from the developer.

9. He further submitted that Chapter VIII-A, introducing a separate chapter for housing societies, came into force on 9 March 2019. According to him, for the first time, this chapter created a statutory liability on a flat owner to pay dues, and such liability can operate only prospectively. He submitted that, at the highest, the Deputy Registrar could have issued a recovery certificate only for the period after 9 March 2019. He also submitted that there is no resolution of the managing committee authorising the society to initiate proceedings under Section 154B-29 of the MCS Act.

10. Learned counsel further submitted that even if the bar of

limitation is held to be inapplicable, the recovery must still be initiated within a reasonable time. He placed reliance on several judgments in support of this submission, including *Gangaben Shyamji Mewada and another vs. Satyan A. Wing Premises Cooperative Housing Society Ltd. and others, 2024 SCC OnLine Bom 2955*; *Municipal Council, Ahmednagar and another vs. Shah Hyder Beig and others, (2000) 2 SCC 48*; *State of Punjab and others vs. Bhatinda District Cooperative Milk Producers Union Ltd., (2007) 11 SCC 363*; *State of Jharkhand and others vs. Shivam Coke Industries, Dhanbad and others, (2011) 8 SCC 656*; *Union of India and others vs. Tarsem Singh, (2008) 8 SCC 648*; *Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation, (2022) 18 SCC 144*; *Samruddhi Cooperative Housing Society Ltd. vs. Mumbai Mahalaxmi Construction Pvt. Ltd., (2022) 4 SCC 103*; the Division Bench judgment of this Court at Aurangabad in *Shivshuvihar Shaishanik Sanstha, Chalisgaon and another vs. State of Maharashtra and others, Writ Petition No. 8966 of 2022* decided on 21 October 2024; *Maharashtra Shikshan Samiti, Amravati and another vs. State of Maharashtra and others, 2010 (4) Mh.L.J. 365*; and *Ankush Shikshan Sanstha through its Secretary and another vs. Rashtrasant Tukdoji Maharaj Nagpur University, 2025 SCC OnLine Bom 2574*.

11. Per contra, Mr. Bhadrashete learned Advocate appearing for respondent No. 1 society submitted that the account extracts produced before the authority clearly show that the petitioners have failed to pay maintenance and other charges from the date they were put in possession of the flats. He submitted that the

petitioners fall within the definition of “promoter” under Section 2(c) of MOFA, as they caused construction to be carried out through the development agreement. According to him, allotment of four flats to the petitioners as consideration under the development agreement confers upon them the status of flat owners for the purpose of Section 154B-29 of the MCS Act. He further submitted that for all practical purposes, the petitioners have treated themselves as owners of the flats, including by paying property taxes.

12. He submitted that reliance placed on Section 92(2) of the MCS Act by the petitioners is misplaced. He relied upon the judgment of this Court in *Sudhakar Hanumant Pawar vs. Divisional Joint Registrar, Cooperative Societies, 2025 SCC OnLine Bom 5353*, wherein it has been held that Section 92 does not govern proceedings under Section 154B-29 of the MCS Act. He submitted that Section 154B-29 operates notwithstanding anything contained in Sections 91, 93, and 98 of the Act. According to him, Section 154B-29 provides a self-contained and special mechanism for effective recovery of society dues.

13. Learned counsel further submitted that the society is entitled to proceed against a member or a person in occupation, as such person represents the premises in law. According to him, membership and occupancy constitute the connecting links. He submitted that Section 154B-29 requires a transferee to clear outstanding dues before being enrolled as a member. Society dues, such as maintenance, repairs, construction costs, and service charges, are not personal debts like loans. They are statutory and

contractual obligations attached to the premises and are enforceable against the person who holds or claims rights in respect of the premises during the relevant period. These dues are recurring in nature and do not get extinguished merely by lapse of time. As long as the person continues to enjoy the benefits of the society, the obligation to pay subsists.

14. He submitted that the society was always willing to admit the petitioners as members, but the petitioners have deliberately avoided becoming members of respondent No. 1 society. He further submitted that levy of interest at the rate of 21 percent is strictly in accordance with the approved bye-laws, and therefore, the petitioners cannot raise any grievance in that regard. He submitted that the proportion of charges levied on the petitioners was decided by the general body from time to time and that maintenance has been charged as per the bye-laws. He further submitted that the applications under Section 154B-29 were filed in Form U as prescribed under the Act and were duly signed in accordance with law. He referred to the definition of "defaulter" under Section 154B-1(11), which includes a member, flat owner, or occupier who fails to pay dues within three months from service of the bill. He submitted that the general body of the society has authorised initiation of recovery proceedings against the petitioners. On these grounds, he prayed for dismissal of the writ petitions.

Reasons and analysis:

15. A cooperative housing society is a creature of statute.

Membership, rights of members, and obligations to pay dues arise from the Act, the Rules, and the bye-laws. Once a person becomes a member, his rights and liabilities qua society are only those which the statute, rules and bye-laws recognize. There is no right that survives outside provisions of the Act. A member has no enforceable right outside the Act, Rules and bye-laws. His obligation to pay dues is statutory and contractual.

16. One of the main purposes of forming and registering a housing society is to enable the members to manage their own affairs for their common benefit. A housing society is not created to earn profit. It is registered so that people living in the same building or layout can collectively look after common facilities and day-to-day needs. After registration, the members elect their own managing committee from amongst themselves. These elected representatives act on behalf of all members. They take decisions relating to maintenance of the building, repairs, water supply, electricity in common areas, security, cleanliness, and other shared services. All such decisions are taken for the welfare of the society as a whole and not for the personal gain of any individual. The method of self-governance is the most important facet of a cooperative housing society. Every member contributes his share towards common expenses, and in return, every member enjoys common amenities. The society functions on collective responsibility. If some members do not pay their dues, the functioning of the society suffers immediately. The society still has to pay for common services like water, electricity, security, cleaning, and repairs. These expenses cannot be postponed. As a

result, the burden shifts to those members who regularly pay. Either they are forced to contribute more, or essential services are reduced. Such non-payment defeats the very idea of a cooperative society. The system is based on equal sharing of responsibility. When a few members default, the purpose of registration of society is frustrated.

17. The nature of society dues such as maintenance charges, repair charges, construction cost, and service charges are recurring statutory obligations arising from membership. They are not one-time claims that get extinguished merely by passage of time. As long as the member continues to enjoy the benefits of the society and remains bound by its bye-laws, the obligation to pay subsists. Individual rights of a member get submerged in the collective right of the society. The society's bye-laws, approved under the Act, govern the relationship. Society dues arise because of occupation and enjoyment of a specific flat or unit. Maintenance, repairs, common services, and common amenities relate to the premises. They are incurred for the building and common areas. The liability follows the flat. It does not arise from any personal act unrelated to the property. Under the Cooperative Societies Act transfer of the flat is restricted until society dues are cleared. When the society asks for money under Section 154B-29, it is only asking a member to pay his share of money that the society already spent for everyone's benefit. That is why the Act treats this section as compensatory. The purpose is to recover money spent. The society has already paid bills or incurred expenses. Member has to reimburse that amount. Section 154B-29 is a tool to collect that

money.

18. Section 154B-29 opens with a non obstante opening clause that makes it clear it will apply even if Sections 91, 93 or 98 would otherwise apply. This means the Act wants this section to prevail whenever there is a question of recovery of society dues. The recovery provided under this section is a special method created by the law itself. Under this section, the Registrar can look into the society's accounts and supporting documents. If the Registrar finds that dues are payable, he can issue a recovery certificate. This certificate becomes the basis for recovery as arrears of land revenue. Sub-section (2) makes the position even clearer. It gives power to the Registrar to act on his own if the society is not taking action. This shows that the legislature did not want society dues to remain unpaid because the managing committee did not act in time. The Act recognizes that societies may face internal disputes or administrative issues. To prevent this from harming the society, the Registrar has been given power to step in. Sub-section (3) gives finality to the recovery certificate. Once the certificate is issued, it cannot be challenged in any civil court. The only remedy is a revision before the authority named in Section 154. This shows that the Act wants speedy and effective recovery without long litigation. The object is to protect the financial stability of the society.

19. There is nothing in Section 154B-29 which prescribes any period of limitation. There is also no indication that the Limitation Act is attracted. When the legislature creates a special right and provides a special remedy with finality, the normal law of

limitation does not automatically apply unless the statute expressly or by necessary implication says so. If the Act permits a mode of recovery and does not impose a time bar, a member cannot import concepts of limitation drawn from general civil law to defeat statutory recovery. Therefore, considering the language of Section 154B-29, its overriding effect, the finality attached to the recovery certificate, and the settled law on the statutory character of cooperative societies, dues of a cooperative housing society recovered under this provision cannot be said to be barred by limitation merely on the ground of lapse of time. The section does not fix any time limit. That is deliberate. The law understands that society expenses keep happening every month. If a member does not pay for years, the society still has to pay electricity, water, repairs, and salaries. The law does not want the society to suffer just because time has passed.

20. Enforcement under Section 154B-29 further strengthens this position. Recovery is as arrears of land revenue. The Collector is empowered to take precautionary measures under the Maharashtra Land Revenue Code. Such measures include attachment of property. This indicates that the statute treats the dues as running with the premises. At the same time, the society proceeds against the member or the person in occupation because that person represents the premises in law. Membership and occupancy are the connecting links. For the period during which a person was a member or was in possession or enjoyment of the premises, the liability is enforceable even if recovery is initiated later. The liability does not vanish merely because ownership

changes. Arrears attach to the flat and must be cleared before valid transfer or recognition of a new member.

21. In the case of *Sudhakar Hanumant Pawar*, this Court held that Section 92 of the Maharashtra Cooperative Societies Act does not control or apply to proceedings under Section 154B-29. The Court held that Section 154B-29 is a separate recovery system. In the present matter because the petitioners tried to rely on Section 92 to argue limitation and procedure. But if Section 92 does not apply, then the petitioners cannot use it to stop recovery under Section 154B-29. Section 92 deals with disputes under section 91. Section 154B-29 deals with recovery of dues by a summary process. If both sections are mixed, recovery proceedings will get stuck in technical objections meant for disputes under section 91. The law did not intend that. The law wanted housing societies to have a quick method to recover dues. The Court in *Sudhakar Hanumant Pawar* recognised this purpose. Therefore, in the present case, reliance on Section 92 cannot succeed. The Court must test the society's actions on the touchstone of Section 154B-29 alone.

22. The obligation to pay society dues is not a one-time obligation. It is a recurring and continuing obligation. Every month, the member is under a fresh duty to pay maintenance and service charges as fixed under the bye-laws. This duty exists so long as the person continues to be a member or continues to occupy and enjoy the premises. Non-payment is therefore not a completed wrong like eviction or dispossession. Here, the breach itself repeats. Each month of non-payment is a fresh omission to

perform a positive duty.

23. The Constitution Bench in the *M. Siddiq v. Suresh Das* , (2020) 1 SCC 1 gives a clear test to understand a continuing wrong. That test fits squarely in cases of society dues. First, there is a clear legal obligation. The Cooperative Societies Act, the Rules, and the bye-laws make it compulsory for a member to pay society dues. This duty does not depend on choice or convenience. It flows directly from membership and occupation of the flat. Second, this obligation is not for one day or one occasion. It continues month after month. As long as the member occupies the premises and enjoys common facilities, the duty to pay maintenance and service charges remains alive. Third, the breach is also continuing. Every month when the dues are not paid, there is a fresh failure to perform a legal duty. It is not a situation where the wrong is completed once and only its effect remains. Here, the very source of injury continues because the duty continues and the default continues. When this position is applied to limitation and reasonable period, the argument of delay loses much of its force. Since the wrong is continuing, the cause of action does not arise only once. It arises repeatedly so long as the dues remain unpaid. Merely because the society did not immediately initiate recovery proceedings does not mean the liability has vanished. This also explains why Section 154B-29 does not fix any period of limitation. The legislature has treated unpaid society dues as a subsisting liability. By allowing recovery as arrears of land revenue, the law recognizes that such dues are essential for the functioning of the society and cannot be allowed to lapse only because of

passage of time.

24. The Supreme Court in the *CWT v. Suresh Seth, (1981) 2 SCC 790* explains the idea of a continuing wrong in very clear terms. It is held that when the complaint is about failure to perform a positive duty, it has to be seen whether the duty is of such a nature that it must be performed continuously. If the law or an agreement requires a person to keep doing a particular act, then failure to do so is not a one-time lapse. It becomes a continuing wrong. Each day of failure gives rise to a fresh breach. If a person is bound to keep premises in good repair, that duty does not end in one day. If the premises are allowed to remain in disrepair, the breach continues every day. Similarly, a person who gives a continuing guarantee remains bound so long as the guarantee operates. Obstructing a right of way or blocking the flow of water is also not a single completed act. The obstruction continues until it is removed. A man who is legally bound to maintain his wife and children commits a continuing wrong if he refuses to maintain them. The breach does not end on the first day of refusal. It continues for as long as he fails to discharge that duty. Likewise, running a factory without safety measures is a continuing breach because the obligation to ensure safety exists every day the factory runs.

25. The judgments cited by the petitioners mostly deal with either service benefits, tax assessments, compensation, or fixed monetary claims. Those situations are not the same as monthly recoveries for continuing services or continuing obligations. The principle of reasonable time cannot be applied in the same strict

manner to recurring claims. Therefore, in the context of these facts, the submission on reasonable time does not help the other side. The liability here is continuous. Every month gives a fresh demand. The recurring cause of action keeps the claim alive. Hence, the plea of stale claim is unavailable for a recurring obligation.

26. The petitioners contend they signed an unregistered development agreement with the builder. They got possession of the flats. They contend they were never made members of the society. They rely on the fact that there was no registered agreement of sale. They contend this shows they are not flat owners and cannot be asked to pay society dues. The society contends the petitioners acted as promoters and caused the construction. The society contends the petitioners got four flats as consideration. The society contends the petitioners treated the flats as their own by paying taxes and enjoying all benefits. The society contends this conduct shows that the petitioners are flat owners for the purpose of payment of dues.

27. In this background, Section 10 of MOFA puts a duty on a promoter. When the minimum number of flat takers is reached, the promoter must form a cooperative society or company within the time laid down by law. The promoter must apply for registration of the society. The promoter must also join as member for the flats not yet sold. The law also allows the promoter to sell the remaining flats later. This duty exists to ensure that the building is not left without a legal body to manage it. The promoter cannot avoid this duty by keeping the flats in his own control without

forming a society. If the petitioners acted as promoters under MOFA, they had a legal duty to form the society within time. They had to join the society for the flats not yet sold. They could not avoid this duty by contending there was no registered agreement or that they were not admitted as members. A promoter cannot enjoy control over the building, keep possession of flats, pay taxes, and use amenities. Their role as promoters links them to the building even if there is no registered agreement. Mere lack of a registered agreement does not by itself protect them. If they occupied the flats, paid taxes, and used the building, they represented the premises. In such a case, they can be treated as persons responsible for dues.

28. The society contends it has a right to charge twenty one percent interest. It bases this on its bye laws. The law allows a society to fix interest in its bye laws or by way general body resolution. This is not illegal by itself. The Petitioners have not shown any law that stops a society from fixing interest at twenty one percent. They have not shown that the rate crosses any statutory ceiling. On these facts, this Court cannot hold that the clause on interest is illegal on its face.

29. For the reasons discussed above, there is no valid ground to set aside the judgment and order passed by the authorities. The authorities have acted within their powers. The findings are based on the material before them. No error is shown which requires interference.

30. The writ petitions are therefore dismissed.

31. At this stage, learned Advocate for the petitioners has prayed for stay of this Judgment. However, for the reasons stated in the judgment, the request for stay of Judgment is rejected.

(AMIT BORKAR, J.)