IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15657 OF 2026

AND

WRIT PETITION NO. 15658 OF 2026

Sameer Lalit Kanodia ...Petitioner

V/s.

State of Maharashtra and Ors. ...Respondent

Mr. Aseem Naphade *with Ms. Kashmira K. Dingankar for Petitioner.*

Mr. Swaraj Jadhav, *Mr. Vikas Kumbhar, Ms. Shruti Kumbhar and Mr. Gaurav Nankar for Respondent No. 4.*

Mr. P. V. Nelson-Rajan, *AGP for Respondent State in WP 15657 of 2026.*

Ms. Crasto, *AGP for Respondent State in WP. 15658 of 2026*

CORAM: SANDEEP V. MARNE, J.

DATED: 25 NOVEMBER 2026.

Oral Judgment:

1) ***Rule*** in both the Petitions. Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petitions are taken up for final disposal.

2) These Petitions are filed challenging the Order dated 19 November 2026 passed by the Deputy Registrar Co-operatives Societies

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G/S ward, Mumbai (**Deputy Registrar**) allowing the Appeals preferred by Respondent No. 4 in both the Petitions (*Mr. Vishnoo B. Chainani and Mrs. Malika V. Chainani*) and setting aside the decision of the Election Officer rejecting their nominations on the ground of being defaulters. The net result of the impugned orders dated 19 November 2026 is that Respondent No. 4 in both the Petitions (*Mr. Vishnoo B. Chainani and Mrs. Malika V. Chainani*) are now declared eligible to contest the elections of the society.

3) I have heard Mr. Naphade, the learned counsel appearing for Petitioner, Mr. Jadhav, the learned counsel appearing for Respondent No. 4 and Mr. P. V. Nelson-Rajan and Ms. Castro, the learned AGP appearing in the respective Petitions. I have considered the submissions canvassed by them.

4) The Election Officer had adjudged Mr. Vishnoo B. Chainani and Mrs. Malika V. Chainani as ineligible/disqualified to contest the election to the managing committee of the society on the ground that they are defaulters within the meaning of Section 154B-23 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). In Appeals preferred by them under Section 152A of the MCS Act, the Deputy Registrar has set aside the decision of Election Officer dated 9 November 2026. It would be apt to reproduce the relevant findings recorded by the Deputy Registrar in both the impugned orders, which read thus:-

> 2) ज्याअर्थी, अर्जदार यांनी थकबाकी रक्कमेचे अनुषंगाने देखभाल शुल्क प्रतिवादी संस्थेस अदा केले आहे. या बाबत अर्जदार यांचे अधिवक्ता यांनी

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संस्थेस ई-मेल केले आहे त्याचे प्रत या कार्यालयात सादर केले आहे. त्यानुसार अर्जदार यांनी देखभाल शुल्क अदा केले आहे, असे दिसून येते व अर्जदार यांनी इतर शुल्क - ज्यात विवादीत रक्कमा / ज्याबाबत वाद आहे, असे रक्कमा प्रतिवादी संस्थेस अदा केलेली नाही, असे या कार्यालयातील संस्थेमार्फत दाखल करण्यात अलेल्या केलम A ५४ब-२९ चे वसुली दावा मधील रोजनामांवरून दिसून येते. सदर दावा न्यायप्रविष्ठ असून त्याबाबतीत कोणतेही अंतिम निर्णय या कार्यालयाने निर्गमित केलेले नाही.

3) सबब, अर्जदार यांचे विवादित रक्कमेबाबत निर्णय या कार्यालयाचे स्तरावर होणे आवश्यक आहे व या बाबत या कार्यालयात कलम १५४ब-२९ अन्वये सुनावणी चालु आहे. तरी अर्जदार हे थकबाकीदार आहे, असे म्हणता येणार नाही. मात्र या कार्यालयाचे निर्णय नुसार अर्जदार यांस थकबाकी रक्कम अदा करणे बाबत उचित कार्यवाही करावी लागेल, या अटीवर अर्जदार यांचे नामनिर्देशन अर्ज मंजुर होण्यास हरकत नाही, अशी या कार्यालयाची धारणा आहे.

5) Mr. Naphade invites attention of this Court to e-mail dated 1 October 2026 sent by Advocate of Mr. Vishnoo B. Chainani and Mrs. Malika V. Chainani which clearly indicates that the duo had admitted the defaults. They paid only outstanding regular maintenance for the period from January 2024/2025 to December 2026 i.e. the amount of Rs. 2,66,024/- for flat No. 1101(Mrs. Malika V. Chainani) and Rs. 3,76,244/- for flat no. 1102 (Mr. Vishnoo B. Chainani). The balance amount is disputed by them in respect of both the flats, by stating as under:

Flat No. 1101 (Mrs. Malika V. Chainani):

* Past Payments (Repairs/Lift): My client has already paid Rs.6,14,898/- towards 3 Major Repairs installments and 3 Lift Installation installments between April 2022 and December 2023 (Last Payment made on 24.10.2023 via Cheque No. 337794, Canara Bank).
* Past Payments (Maintenance): Flat maintenance stands paid till 27.12.2024 (via Cheque No. 337799, Canara Bank for Rs. 77,632l-).
* Undisputed Amount Being Tendered Now: Outstanding regular maintenance for the period of January 2025 to December 2026 amounting to Rs. 2,66,024/-.

Disputed Amount: The alleged outstanding amount of Rs. 3,04,966/- towards "Major Repairs" is strictly disputed and shall be contested before the Registrar.

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> **FLAT NO. 1102 (Mr. Vishnoo B. Chainani):**
> * Past Payments (Repairs/Lift): My client has already paid Rs. 6,22,898/- towards 3 Major Repairs installments and 3 Lift Installation installments between April 2022 and December 2023 (Last payment made on 21.10.2023 via NEFT # PUNBH23295196180).
> * Past Payments (Maintenance): Flat maintenance was last paid on 22.10.2023 (via NEFT # PUNBH23295207315 for Rs. 39,453/-).
> * Undisputed Amount Being Tendered Now: Outstanding regular maintenance for the period of January 2024 to December 2026 amounting to Rs. 3,76,244/-.
> **Disputed Amount: The alleged outstanding amount of Rs. 3,04,966/- towards "Major Repairs" is strictly disputed and shall be contested before the Registrar.**
>
> *(emphasis added)*

6) Thus, Mr. Vishnoo B. Chainani and Mrs. Malika V. Chainani took a call to dispute the amounts of Rs. 3,04,966/- *qua* both the flats charged by the society under the head 'Major Repairs' and have decided to contest the same before the Registrar. The society has apparently filed proceedings under Section 154B-29 of the MCS Act for recovery of dues from them. No doubt, they are entitled to contest the demand raised by the society by opposing the recovery proceedings and to raise all available defences. However, once they exercise the option of contesting the demand raised by the society, they correspondingly lose the right to contest society's elections. This is because under Section 154B(23) of the MCS Act, a member is not entitled to be nominated or elected for being member of the managing committee, if he/she is 'defaulter' of the society. Section 154B-23 of the MCS Act provides thus:

> **154B-23. Disqualification of Committee and its members:**
>
> (1) Without prejudice to the other provisions of this Act or the rules made thereunder, in relation to the disqualification of being a Member of the Committee, **no person shall be eligible to be appointed, nominated, elected, co-opted for being a Member of Committee**, —
>
> **(i) if he is a defaulter of any society, or**

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(ii) if he carries on business of letting, subletting and selling of flats in the housing society of which he is a Member, or
(iii) if he has been held responsible under section 79, 88,154 B-8(2) or 154B-27 or for payment of cost of enquiry under section 85, or
(iv) if he has incurred any disqualification under this Act or the rules made thereunder, or
(v) if he incurs any of the disqualification similar to that mentioned in the provisions of clause (vii), (viii) or (ix) of clause (f) of sub-section (1) of section 73CA.

(2) A Member, who has incurred any disqualification under sub-section (1), shall cease to be a Member of Committee and his seat shall thereupon be deemed to be vacant.

(3) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification under clause (ii), (iii), (iv) or (v) of sub-section (1), shall not be eligible to be re-elected, re-co-opted or re- nominated as a Member of Committee for five years from the date on which he or she has so ceased to be a Member of the Committee.

(4) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification other than disqualifications, referred to in sub-section (3), shall, unless otherwise specifically provided in this Act, be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee as soon as such disqualification ceases to exist.

(emphasis added)

7) The term ‘defaulter’ is defined in Section 154B-1 (11) of the MCS Act as under:-

"defaulter" means a Member or flat owner or occupier who fails to pay the dues of the society within three months from the date of service of bill or notice or due date of payment, whichever is later;

8) The term ‘dues’ is defined under Section 154B (12) of the MCS Act as under:

"dues" means the amount payable by a Member or flat owner to the society and demanded by the society by issuing bill or notice in writing

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and such demand is based on the provisions of this Act, rules and bye-laws of the society ;

9) In the present case, the society has resolved to recover from all members amounts towards 'Major Repairs'. It is the contention of Respondent No. 4, that the society is not carrying out repairs of their flats and that therefore they are not liable to contribute any amount towards 'Major Repair'. That this can be one of the defences to be raised in opposing the recovery proceedings under Section 154B (29) of the MCS Act. However, raising of such dispute would not exclude Respondent No. 4 from definition of the term 'defaulter'. Once the society demands the dues and period of three months expire from raising of the demand, the default occurs automatically and any justification offered for not paying the demanded amount would not prevent the consequences of such default.

10) The statutory scheme of the MCS Act provides for mandatory denial of right to contest the elections by any person who has defaulted in paying the dues of the society. The objective is to ensure that a defaulter member does not later manage the affairs of the society by getting elected on the managing committee. The provision also ensures a deter on members who do not clear the society's dues by denying them the right to contest the elections.

11) Under the MCS Act, right of a member to defend the recovery proceedings is a concept different and distinct than the concept of member's right to contest the elections. The two concepts cannot be conflated. Mere pendency of recovery proceedings initiated by the

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Society under Section 154B-29 of the Act does not result in suspension of consequences flowing out of default. Once a bill or notice for payment is served on a member by the Society and a period of 3 months has expired, the default automatically occurs. The disqualification attached to the default also triggers immediately and the same does not get suspended during pendency of the recovery proceedings.

12) The Deputy Registrar has recorded a bizarre finding in her impugned orders that the maintenance dues are paid by Respondent No. 4 and that only the disputed amount is outstanding, for which recovery proceedings are pending under Section 154B-29 of the Act and that recovery certificate is so far not issued by the Registrar. If this interpretation of provisions of Section 154B -23 placed by the Deputy Registrar is countenanced, every defaulter member would contest election of the housing society on a specious plea that proceedings for recovery under Section 154B-29 of the MCS Act are pending. The society is not expected to procure a certificate from the Registrar under Section 154B-29 of the MCS Act for triggering of disqualification. The disqualification gets triggered the moment default occurs and the same is neither suspended nor gets delayed due to pendency of the recovery proceedings.

13) The distinction drawn by the Deputy Registrar in regular maintenance dues and dues towards major repairs, which are disputed by Chainanis, is baseless. The scheme of MCS Act does not permit darwal of such distinction. The concept of a ‘defaulter’ applied in respect of every demanded ‘dues’ of the society and the Act does not differentiate

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between the regular maintenance dues and contribution to the repair fund. Even default in contributing to the repair fund would make Respondent No. 4 in both Petitions as 'defaulters' automatically attracting the disqualification under Section 154B-23 of the MCS Act.

14) In my view, the findings recorded by the Deputy Registrar in the impugned orders are clearly unsustainable and the same are liable to be set aside. Respondent No. 4 in both the Petitions have clearly admitted existence of dues *qua* both the flats. Merely because they want to dispute levy of 'Major Repair' charges the same is not a ground for not treating them as defaulter members. So far as contesting of in the elections is concerned, since Respondent No. 4 in both the Petitions are covered by definition in the term 'defaulter' within the meaning of Section 154B-1 (11) of the MCS Act, they have acquired disqualification under Section 154B-23 of the Act. The Deputy Registrar has erred in reversing the decision of the Election Officer.

15) Mr. Jadhav has strenuously contended that the Petition is not maintainable as Petitioner has alternate and equally efficacious remedy of filing a Dispute challenging the election under Section 91 of the MCS Act. Provisions of Section 152A (1) of the MCS Act would indicate that no further appeal or revision lies against the decision of the Registrar rendered on the Appeal filed by the affected candidate. Therefore, filing of the present Petition under Article 227 of the Constitution of India is the correct remedy available to the affected party against the decision of the Deputy Registrar under Section 154A (1) of the Act. Mere availability of a remedy under Section 91 of the MCS Act or

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Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 cannot come in the way of this Court execrcising extraordinary jurisdiction under Article 227 of the Constitution of India when a flagrant error in exercise of jurisdiction by the Deputy Registrar is noticed.

16) Mr. Jadhav makes a last attempt to save the impugned orders by contending that Respondent No. 4 in both the Petitions are willing to deposit with the society the outstanding amounts even qua 'Major Repairs' without prejudice to their rights and contentions in Section 154B-29 proceedings. However, the status of Respondent No. 4 needs to be determined as on 6 November 2026, which was last date for filing the nominations. On that date, they were defaulters. The nominations which are *ab initio* void cannot be infused life by converting them as valid nominations by now depositing defaulted amount with the society. This is a non-curable defect in the nomination. Therefore, Respondent No. 4 in both the Petitions cannot now be permitted to make a deposit in respect of default amounts with a view to save rejection of their nominations. Here, reliance by Mr. Naphade on the judgment of Division Bench of this Court in ***Bharat H. Mehta Vs. Secretary, Jai Hind CHSL***[1] is apposite in which it is held that a co-operative housing society member who fails to clear demanded society dues within the statutory three-month period under Section 73FF(1)(e) of the MCS Act is disqualified as a defaulter from contesting managing committee elections. It is held in para 6 and 9 of the judgment thus:

[1] 2000 SCCOnline Bom 250

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> 6. The learned Counsel for the appellant Shri Soni has raised certain contentions before us. One of the contentions is that on the basis of the decision rendered by this Court in Ramesh Rajaram Patil v. Additional Commissioner, Aurangabad Division, 1995 (1) Mh.L.J. 208 the candidate is entitled to discharge the dues to the society even on the date of scrutiny. We are unable to apply the ratio of that case to the facts of the present case since that case was decided under section 73-FF(1)(c)(ii) of the Act whereas the present case arises under section 73-FF(1)(e) of the Act. **Even otherwise, the ratio of that case has no application to the present case since, even on the date of scrutiny, the appellant did not clear the dues and kept on contending that he has already paid Rs. 1000/- by cash earlier. Shri Soni did try to persuade this Court to accept the offer of payment of dues at this stage but we consider it a belated offer, like the learned Single Judge did. In this regard, reference may be made to section 73-FF(1)(e) where the period provided for paying up the dues of the society by the member who is in default is 3 months. Having regard to the fact that the notice of demand issued by the Society to the appellant in this case is dated 1st November, 1999 received by him on 16th November, 1999 and in view of the admitted position that till 15th February, 2000 the amount has not been paid, it is clear that there is no discharge of liability as required by law.**
>
> 9. In this view of the matter, we are not inclined to interfere with the order of the learned Single Judge and particularly in view of the remedy of an election petition available to the appellant. In which all the disputed facts can be resolved appropriately.
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> *(emphasis added)*

17) Conspectus of the above discussion is that the Deputy Registrar has faltered in reversing the decisions of the Election Officer. The impugned orders passed by the Deputy Registrar on 19 November 2026 are indefensible and are liable to be set aside.

18) Petitions accordingly succeed. Orders dated 19 November 2026 passed by the Deputy Registrar are set aside and decisions of Election Officer dated 9 November 2026 adjudging nominations of Respondent No. 4 in both the Petitions as invalid/disqualified are upheld. Needless to observe that the proceedings under Section 154B-29 of the

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MCS Act shall be decided uninfluenced by observations made by this Court in the present order, which is confined only to the issue of validity of nominations filed by Respondent No. 4.

19) Writ Petitions are **allowed** in above terms. Rule is made absolute in both the Petitions. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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