IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8034 OF 2025

Monarch Orchid Co-operative Housing Ltd. **...Petitioner**

V/s.

1) The State of Maharashtra

2) Joint Registrar of Co-operative Societies (CIDCO)

3) Assistant Registrar of Co-operative Societies (CIDCO)

4) Makrand Shrikant Padalkar

5) Smt. Leena Makrand Padalkar **...Respondents**

WITH
INTERIM APPLICATION (STAMP) NO.32945 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 36725 OF 2025
IN
WRIT PETITION NO.8034 OF 2025

1) Makrand Shrikant Padalkar
2) Smt. Leena Makrand Padalkar **...Applicants**

<u>In the matter between</u>
Monarch Orchid Co-operative Housing Ltd. **...Petitioner**

V/s.

1) The State of Maharashtra

2) Joint Registrar of Co-operative Societies (CIDCO)

3) Assistant Registrar of Co-operative Societies (CIDCO)

4) Makrand Shrikant Padalkar

5) Smt. Leena Makrand Padalkar

...**Respondents**

Mr. Vaibhav Ugle *with Ms. Kalpana Pandey i/b. Mr. Vikas Somawanshi for the Petitioner.*

Mr. S.A. Jabbar *with Mr. Yash Bangar i/b. Mr. Akash Tayade for Respondent Nos.4 and 5 and for Applicants in IAST/32945/2025 & 36725/2025.*

Mr. P.V. Nelson Rajan, *AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 2 JULY 2026.

Judgment pronounced on: 14 JULY 2026.

JUDGMENT:

1) The issue for consideration in this Petition is whether membership to a cooperative housing society can be denied to an auction purchaser, who refuses to pay the past maintenance dues of the previous owner.

2) ***Rule***. Rule is made returnable forthwith. Since pleadings in the Petition are complete the same is taken up for final hearing with the consent of the learned counsel appearing for parties.

3) The Petitioner-Society has filed the present Petition challenging the Order dated 4 January 2024 passed by the Assistant Registrar, Co-operative Societies (CIDCO), Navi Mumbai, (**Assistant Registrar**) under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (**the MCS Act**), allowing the Application of Respondent Nos.4 and 5 for their admission as society members and directing the society to make entries of admission in the records (in Forms I & J) of the Society and to issue share certificate to them. The order of Assistant Registrar is confirmed by the Joint Registrar, Co-operative Societies (CIDCO), Navi Mumbai (**Joint Registrar**) by dismissing Revision Application No.96 of 2024 preferred by the Petitioner-Society.

4) The Petitioner is a co-operative housing society formed by occupiers of units of the building-Monarch Orchid situated at plot No.94 and 95, Sector No.19, Kharghar, Navi Mumbai (**the Society**) and registered under the provisions of the MCS Act. Mr. Milind Purohit and Minal Purohit (**Purohits**) purchased Flat No.1101 (**the Flat**) in the building of the Society by availing mortgage loan from North Kanara Goud Saraswat Brahmin Co-operative Bank Limited (**the Bank**). The Purohits had mortgaged the flat in favour of the Bank. The Purohits stopped paying monthly maintenance in respect of the Flat and by 12 November 2017, an amount of Rs.1,91,813/- was due and payable by Purohits towards arrears of maintenance. It appears that Purohits also defaulted in repayment of the loan of the Bank. With passage of time, the arrears of maintenance escalated and by 5 March 2020 an amount of Rs.4,53,789/- became due and payable by Purohits, for which the Society issued letter dated 5 March 2020. Since the Flat was mortgaged with the Bank and since the Bank had initiated recovery proceedings against

Purohits, the Society communicated to the Bank by letter dated 7 February 2021 that amount of Rs.5,46,719/- was due and payable in respect of the maintenance of the Flat. By letter dated 12 February 2021, the Bank requested the Society to register its lien in its record against the Flat and not to permit Purohits to sell the flat without Bank's permission.

5) The Bank issued possession notice dated 1 March 2021 under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**the SARFAESI Act**) to Purohits for taking over possession of the Flat with a copy thereof to the Society. It appears that the Bank took over possession of the Flat and proceeded to conduct auction of the Flat for recovery of its dues. The auction was conducted on 17 March 2023 and Respondent Nos.4 and 5- Mr. Makarand Shrikant Padalkar and Smt. Leena Makarand Padalkar (**Padalkars**) turned out to be the successful bidders. On the same day, they wrote to the Society for waiving off the dues payable by Purohits but agreed to abide by the Society's rules and regulations. After learning from Padalkars that they had purchased the Flat in auction conducted on 17 March 2023, the Society immediately wrote to the Bank on 19 March 2023 calling upon the Bank to direct Padalkars to clear Society's dues and not to handover possession of the Flat till the dues were cleared by them. The Bank replied on 28 March 2023 intimating to the Society that in terms of the E-auction, the auction purchaser had undertaken to pay pending and future dues such as maintenance of the Society, etc. and that the said condition has been accepted by the Padalkars. It appears that the Bank handed over possession of the Flat to Padalkars on 28 March 2023. The Bank issued Sale Certificate in respect

of the Flat in the name of Padalkars on 28 March 2023, which was registered in the office of Sub-Registrar, Assurances, Panvel-5. On 9 April 2023, Padalkars wrote to the Society that they were liable to pay Society's maintenance charges only from possession of the Flat since 28 March 2023. The Society wrote to Padalkars on 3 May 2023 calling upon them to pay outstanding dues in respect of the Flat. The Society issued Demand Notice dated 10 October 2023 demanding an amount of Rs.8,05,925/- from Padalkars.

6) Since the Petitioner-Society did not admit Padalkars as members, they filed Application dated 26 October 2023 under Section 23 (2) of the MCS Act before the Assistant Registrar. The Society resisted the Application by filing its reply. After hearing both the sides, the Assistant Registrar passed order dated 4 January 2024 allowing the Application filed by the Padalkars and directing the Society to admit them as members and to issue to them share certificate. The Petitioner- Society filed Revision Application No.96 of 2024 before the Joint Registrar. During pendency of the Revision Application, Padalkars moved the Assistant Registrar, who issued order under Section 154B-7 of the MCS Act directing the Society to implement the order dated 4 January 2024 by making the entries into Forms I and J registers and to issue share certificate to Padalkars. The Revision Application No.96 of 2024 was thereafter heard by the Joint Registrar and by order dated 4 April 2024, the Revision Application has been rejected. Aggrieved by rejection of the Revision, the Petitioner-Society has filed the present Petition. By order dated 24 June 2025, this Court has stayed the order of the Assistant Registrar dated 4 January 2024.

7) The Padalkars have appeared in the Petition and have filed affidavit-in-reply bringing on record *inter-alia* the fact that the Petitioner-Society has filed Dispute under Section 91 of the MCS Act for recovery of maintenance dues in the Cooperative Court at Alibag and the order dated 18 July 2025 rejecting the Dispute under the provisions of order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**). Padalkars also brought on record order passed by the Co-operative Appellate Court on 12 January 2026 setting aside the order of the Cooperative Court dated 18 July 2025. The Padalkars have also filed Interim Application (Stamp) No.36725 of 2025 for vacation/ setting aside of interim order in the light of the judgment of the Apex Court in ***High Court Bar Association Allahabad V/s. State of Uttar Pradesh*** [1]**.** Instead of deciding the Interim Applications, which are aimed mainly at vacating the ad-interim stay, this Court has proceeded to hear the Petition finally with the consent of the learned counsel appearing for the parties.

8) Mr. Ugle, the learned counsel appearing for the Petitioner -Society submits that the Assistant Registrar and Joint Registrar have grossly erred in allowing the Application of Padalkars for admission as members of the Society. That Padalkars have purchased the flat in auction with full knowledge of past dues of previous owner-Purohits in respect of the Flat. That Sale Certificate issued by the Bank to Padalkars is also subject to condition of payment of past dues in respect of the Flat. That the impugned orders of the Assistant Registrar and Joint Registrar are in the teeth of provisions of Section 154B -7 of the MCS Act under which no transfer of share or interest of a member can be effective unless the dues of the housing society are paid. That therefore, Padalkars cannot secure

1 2024 6 SCC 267

membership in respect of the Flat without first clearing the dues of the Society. In support, he relies on judgment of this Court in ***Tanvi's Diamoda Cooperative Housing Society Ltd. V/s. State of Maharashtra*** [2].

9) Mr. Ugle relies on letter dated 17 March 2023 of Padalkars under which they had agreed to abide by Society's rules and regulations. He also invites attention of this Court to the email dated 16 October 2023, under which Padalkars had agreed to pay the principal amount payable by Purohits to the Society. He submits that mere filing/ rejection of Dispute by the Petitioner-Society for recovery of maintenance dues against Padalkars cannot be a reason for directing their admission as members of the Society. That Society is entitled not to admit Padalkars as members till all the Society's dues are cleared by them. He therefore, prays for setting aside the impugned orders.

10) Mr. Jabbar, the learned counsel appearing for Respondent Nos. 4 and 5-Padalkars opposes the Petition. He submits that the Petition suffers from gross suppression since the Petitioner-Society has not disclosed in the Petition filing of the Dispute before the co-operative Court. That the Society has not approached this Court with clean hands and is attempting to recover the dues by indulging in arm twisting tactics even though the Dispute filed by it before the Co-operative Court for recovery of maintenance dues is pending. That since vital information is suppressed, Petition deserves to be dismissed as held by the Apex Court in ***K.D. Sharma V/s. Steel Authority of India Limited and Others***[3] and by this Court in ***Ambada Seva Sahakari Sanstha V/s. Special Recovery Officer and Sales Officer (CB.), Amravati District Central Co-operative***

2 Writ Petition No.8631 of 2025, decided on 20 November 2025.

3 (2008) 12 SCC 481

Bank Ltd. And Others.[4] He also relies on the judgment of the Apex Court in ***Amar Singh V/s. Union of India and others***[5] in support of his contention that parties, who approach the Court with intent to deceive and mislead it are not entitled to be heard on merits of the case.

11) Mr. Jabbar further submits that filing of the present Petition is gross abuse of process of law. That the Petitioner is enforcing parallel remedies in respect of the same cause of action. That in the light of pendency of Dispute before the Co-operative Court for the same cause of action, the Petitioner cannot be permitted to maintain the present Petition. That in any case, conduct of the Petitioner is such that this Court need to be loathe in exercise of jurisdiction under Article 227 of the Constitution of India as held by the Apex Court in ***Garment Craft V/s. Prakash Chand Goel***[6].

12) Mr. Jabbar further submits that dues of the past member can at best constitute a charge on the Flat as per Section 154B-14 of the MCS Act. That the same cannot constitute personal liability for Padalkars. That it was Society's responsibility to recover dues of Purohits from the Bank. That Padalkars cannot be forced to pay maintenance charges in respect of the period when they never occupied the Flat. That the real remedy of the Petitioner is to pursue recovery proceedings under Section 154B-29 of the MCS Act. That the Society has not exercised the summary remedy under Section 154B-29 since there are serious disputed questions and hence it has adopted remedy under Section 91 of the MCS Act. That since there is dispute between the parties, Section 154B-7 cannot be invoked for denying membership due to existence of past dues.

4 2025(5) Mh.L.J. 525
5 2011 (7) SCC 69
6 (2022) 4 SCC 181

He relies on judgment of this Court in ***Brightland Cooperative Housing Society Ltd. V/s. Divisional Joint Registrar, Cooperative Societies and Others***[7] in which it held that when there is dispute about past dues, membership of the Society cannot be denied under Section 154B -7 of the MCS Act. He relies on judgment of this Court in ***Banganga Anurag Co-operative Housing Society Limited V/s. The Divisonal Joint Registrar, Mumbai & Ors.***[8] submitting that the judgment discusses the ratio of the judgments in ***Brightland*** as well as in ***Tanvi's Diamoda*** (supra) and held that unless the dues are adjudicated in a Section 91 proceedings, non-payment of the same cannot be a reason for denial of membership. He accordingly prays for dismissal of the Petition.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) The issue that arises for consideration in the Petition is whether the membership to an auction purchaser of a flat in a cooperative housing society can be withheld on the ground of non-payment of maintenance dues of previous owner in respect of the Flat. To paraphrase, whether a purchaser can be made liable to pay the maintenance dues unpaid by previous owner and whether clearance of such maintenance dues can be made a pre-condition for grant of membership by the Society.

15) Since the Society refused to admit Padalkars as its members, they invoked jurisdiction of Assistant Registrar under sub-section (2) of Section 23 of the MCS Act and accordingly the impugned order has been

7 2025 SCC OnLine Bom 2795.
8 2026(3) ALL MR 71

passed by the Assistant Registrar on 4 January 2024 directing the Society to admit Padalkars as its members. Section 23 of the MCS Act, under which jurisdiction is exercised by the Assistant Registrar provides thus:

> **23. Open membership.**
>
> (1) No society shall without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.
>
> (1A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.
>
> (2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar, within a period of sixty days from the date of the decision of the society. Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt :
>
> **Provided that**, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

16) In the present case, Padalkars have apparently purchased the Flat in E-auction conducted by the Bank with full knowledge of past dues payable by previous owners-Purohits. As observed above, Purohits had mortgaged the Flat with the Bank and the Bank was required to sell the same with a view to recover the loan amount through E-auction. The Society sent four communications to Purohits on 12 November 2017, 25 January 2018, 5 February 2020 and 5 March 2020 demanding

outstanding maintenance dues. The Society also informed the Bank by letter dated 7 February 2021 that there were dues to the tune of Rs.5,46,719/- payable by Purohits in respect of the Flat. The Bank thereafter proceeded to take possession of the Flat from Purohits on 12 March 2021 by issuing intimation to the Society vide letter dated 1 March 2021. The Bank apparently conducted E-auction of the Flat on 17 March 2023 and Padalkars were the successful auction purchasers. It appears that Padalkars had bid Rs.86,20,000/- for purchase of the Flat in E-auction.

17) As observed above, Padalkars were fully aware of pending maintenance dues of Purohits towards the Society and this is the reason why on 17 March 2023 (date of auction) Padalkars wrote to the Society asking for waiving of unpaid society charges of Purohits. Padalkars however, undertook to abide by Society's rules and regulations by cooperating in all procedures pertaining to transfer of ownership. Relevant part of Padalkars' letters dated 17 March 2023 reads thus:-

> This is to inform you that I undersigned have been allotted for flat 1101 in Auction held today. I have heard that tte first owner Mr. Milind Purohit has not paid society charges for long time. Also I see further procedures where I have to get society shares & owner file on my name in which society may demand or recover those due charges from me as a new buyer of that property.
>
> It will lbe quite difficult for me to cater/bear other pending dues not paid by first owner Mr. Milind Purohit. Therefore, I kindly and humbly request you to this matter across society authorities & General body of Society to consider my application & writ off/waive off due society charges not paid by the first owner. I assure you that I will abide by society rules & regulations followed by co-operate in all procedure pertaining to transfer of ownership.

18) Immediately after notice of conduct of auction through letter dated 17 March 2023, the Society once again wrote to the Bank on 19 March 2023 in which it is stated as under:-

> We came to know vide the letter dated 17/03/2023 written by Mr. Makarand Shrikant Padalkar that he has got the above flat on E-AUCTION dated 17/03/2023. AS of now wer are not aware about the transaction held by the NKGSB Bank and Mr. Makarand Shrikant Padalkar.
>
> Earlier telephonic discussion with the Society Chairman Sh. Manish Desai, it was discussed that the bank shall not provide the possession fo the flat until the dues are cleared. It is once again requested to you to convey the message to the proposed buyer Sh. Makarand Shrikant Padalkar to clear the dues.
> Further, we proposed to call a Special General Body Meeting in First week of April 2023 to discuss the application received from Sh. Makarand Shrikant Padalkar to partially waiving off of interest amount. After the resolution is passed in the SGM the Society will issue a No Objection Certificate to the proposed owner (Sh. Makarand Shrikant Padalkar) for the possession of the flat and copy to the Bank.
>
> Therefore, you are requested to keep the possession of the flat 1101, Monarch Orchid CHS Ltd. On hold till our next intimation.

19) The Society has requested the Bank to direct Padalkars to clear the dues. It also referred to Padalkar's letter dated 17 March 2023 and communicated to the Bank that Special General Meeting was proposed to be held in April 2023 to discuss Padalkars' request for partially waiving off the interest amount. The Bank responded on 28 March 2023 informing the Society that full purchase price was paid by Padalkars and that the Sale Certificate was registered on 28 March 2023. The Bank also communicated to the Society that it could not hold back the possession and that the possession was also handed over to Padalkars on 28 March 2023. The Bank however, stated in the letter dated 28 March 2023 as under:

> **Further as per the clause of Terms of E-Auction the auction purchaser has to undertake to pay pending & future dues such as, maintenance of the Society dues**, Local Assessment Taxes, Electricity Bills, any other dues and transfer fees to effect the Transfer of said Flat in name of Auction Purchaser **and the same was accepted by Mr. Makarand Padalkar & Mrs. Leena Padalkar**.
>
> Hence considering all of the above from now onwards society may communicate directly with Mr. Makarand Padalkar & Mrs. Leena Padalkar for any request/demand/explanation in terms of pending dues/fees.
>
> *(emphasis added)*

20) Perusal of the Certificate of Sale executed by the Bank in favour of Padalkars would indicate that the same was made subject to Padalkars undertaking to pay pending and future dues of maintenance to the Society. This is clear from following covenants in the Certificate of Sale:

> **The sale of the scheduled property was made on 'As is Where is Basis & What Is As Is Basis'** on the terms and conditions of E-Auction Sale Notice published in daily newspaper 'The Free Press Journal' & 'Navshkti' on 22/02/2023 and **hence the auction purchaser undertake to pay <u>pending</u> & future dues such as, <u>maintenance of the Society dues</u>, Local Assessment Taxes, Electricity Bills, any other dues and transfer fees to effect the Transfer of said Flat in name of Auction Purchaser.**
>
> *(emphasis and underlining added)*

21) Thus, purchase of the Flat by Padalkars was not only with full knowledge of pending maintenance dues of Society but is made subject to Padalkars paying pending maintenance dues of the Society. However, contrary to the conditions of sale, Padalkars refused to pay past dues of Purohits vide letter dated 9 April 2023 and communicated to the Society that maintenance would be paid w.e.f. 28 March 2023, when possession of the Flat was taken by them. The Society did not agree and by referring to the condition in the Sale Certificate, called

upon the Padalkars to pay all past dues of the Purohits in respect of the Flat by letter dated 3 May 2023.

22) The Petitioner has also brought on record a document in the form of email dated 16 October 2023, which contains a forwarded message of Mr. Makrand Padalkar, which reads thus:-

> Please refer to our request letter attached herewith dated 09/04/2023 for subjected formalities pending at your end.
>
> This is to inform you that it has been more than two weeks since we have approached you for completion of subjected formalities. But there is no response from your side in writing till today. Shall we consider that society is not willing to co-operate & complete these formalities moreover delaying it intentionally? If yes then we need to know the reason in writing so that we can appeal/complain to the Society Registar in this case.
>
> We still intend to complete remaining formalities of Society Membership on Top priority i.e. share transfers & NOC for CIDCO transfer. **<u>As mentioned earlier</u>, we are ready to pay first owners principal due amount on payment against documents basis.**
>
> Kindly let us know when we can proceed for the same so that relevant documents & payment can be arranged. You can reach us on below contact details…
>
> *(emphasis and underlining added)*

23) Email dated 16 October 2023 was apparently sent by Mr. Makrand Padalkar to his Advocate and there is a forwarded message attached thereto, which is apparently not sent to any particular person. Upon being queried, it is clarified by Mr. Jabbar (*after taking instructions from Mr. Padalkar, who was personally present before the Court*) that what was forwarded to the Advocate was a mere draft prepared by Mr. Makrand Padalkar. However, it appears that in that draft email, Padalkars had apparently agreed to pay principal amount due from Purohits '*as mentioned earlier*'. Thus, there appears to be some

willingness on the part of Padalkars to pay at least the principal amount of maintenance dues in respect of the period prior to taking over possession of the Flat.

24) The Assistant Registrar has however recorded a virtually incorrect finding that the Bank did not communicate to Padalkars about pending maintenance dues of Purohits in respect of the Flat. This is clear from following findings in the Assistant Registrar's order:-

> सदर सदनिकेसाठी संबंधित सदनिकाधारक यांचेकडून संस्थेस येणे असलेल्या रकमेबाबत जाब देणार संस्थेने एनकेजीएसबी को.ऑप. बँक. लि. याना अवगत केल्याचे दिसून येत नाही.

25) From the discussion made above, it is more than apparent that Padalkars were fully aware of past maintenance dues in respect of the Flat and in any case, became aware of the same while conduct of auction on 17 March 2023. The sale was not complete on 17 March 2023 and therefore it cannot be assumed that Padalkars were not aware of the past maintenance dues when they decided to purchase the Flat in the E-auction.

26) Assistant Registrar has recorded further perverse finding that the Society did not initiate any action against Purohits for recovery of maintenance dues and failed to perform its statutory duty. This finding is contrary to the factual position where the Society wrote as many as four communications to Purohits during 12 November 2017 to 5 March 2020. The Society issued Demand Notice dated 5 February 2020 and also issued a reminder letter dated 5 March 2020. Thereafter Covid-19 Pandemic possibly prevented the Society from initiating any action

for recovery of maintenance dues from Purohits and the Bank thereafter started recovery proceedings and took over possession of the Flat in March 2021. The Bank had already issued notice under Section 13(2) of the SARFAESI Act to Purohits on 12 April 2018. In these circumstances it is unfair to accuse the Society of not performing statutory duty as erroneously held by the Assistant Registrar.

27) The Assistant Registrar has further erred in holding that the maintenance dues became part of disputed amount and that therefore dispute relating to the same was outside his Jurisdiction and could only be adjudicated by the Co-operative Court under Section 91 of the MCS Act. As a matter of fact, there is absolutely no dispute about amount of maintenance dues payable. The dispute is only about Padalkars' liability to pay the same. While repeatedly referring to Sale Certificate dated 28 March 2023, the Assistant Registrar has conveniently ignored specific stipulation therein that the sale was subject to payment of pending maintenance dues to the Society. The Assistant Registrar has further ignored the provisions of Section 154B-7 of the MCS Act, which are discussed in the latter portion of the judgment. The order passed by the Assistant Registrar is thus clearly erroneous.

28) The Joint Registrar ought to have set aside the order of the Assistant Registrar. However, instead of doing so, the Joint Registrar proceeded to dismiss the Revision Application by merely narrating facts of the case, recording submissions of parties and by making following observations:-

> उक्त निरिक्षणे विचारात घेता आव्हानित आदेशाच्या अनुषंगाने संस्थेने फ्लॅट क्र ११०१ च्या थकीत देखभाल शुल्काकरीता मा को ऑप कोर्ट अलिबाग यांचेकडे दावा दाखल केलेला असून तो प्रलंबित आहे. याचा अर्थ संस्थेने प्रतिवादी क्र १ यांचे

आदेशाचे अंशतः पालन केले असल्याचे दिसून येत आहे त्यानुसार संबंधित थकबाकी वसुली संस्थेस करता येणार आहे. प्रतिवादी क्र २, ३ यांनी अर्जदार संस्थेतील फ्लॅट क्र ११०१ हा ई लिलावाव्दारे नोंदणीकृत दस्तानुसार खरेदी केल्याचे दिसून येत आहे. नोंदणीकृत दस्तानुसार प्रतिवादी क्र २, ३ हे संस्थेचे सभासदत्व मिळविणेस पात्र आहेत. संस्थेने प्रतिवादी क्र २, ३ यांना सभासदत्व नाकारल्याने सदर प्रकरण कलम २३ (२) नुसार निर्णयीत करण्यात येत असल्याचे प्रतिवादी क्र १ यांनी त्यांचे आदेशात नमूद केले आहे. प्रतिवादी क्र १ यांनी संबंधितांना सुनावणीची संधी देऊन दाखल कागदपत्रे विचारात घेऊन दि. ०४.०१.२०२४ रोजीचा आदेश पारित केल्याचे दिसून येत आहे. त्यामुळे सदर आदेश कायम करणे योग्य होईल या निर्णयाप्रत मी आले आहे.

29) The Joint Registrar has thus put a premium on errors already committed by the Assistant Registrar. The Joint Registrar has merely referred to the act of the Society in filing dispute before the Co-operative Court under Section 91 of the MCS Act and has proceeded to uphold the order passed by the Assistant Registrar. In my view therefore, even the order passed by the Joint Registrar, being wholly erroneous, deserves to be set aside.

30) Coming to the statutory scheme of the MCS Act, special provisions therein are made relating to Co-operative Housing Society by inserting Chapter XIII-B vide Maharashtra Act 23 of 2019 w.e.f 9 March 2019. The special provisions relating to Co-operative Housing Societies are made taking into consideration the special needs of housing societies. Section 154B-7 is inserted into the MCS Act making a special provision in relation to transfer of share or interest of a member. Section 154B-7 puts a restriction on transfer of share and interest of a member and provides thus:-

154B-7. Restriction on transfer of share or interest of a Member.—

Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or the occupancy right, except the transfer of his heir or a nominee, shall be effective unless,—

(a) the dues of housing society are paid ;

(b) the transferee applies and acquires Membership of the co-operative housing society in due course of time :

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

Explanation.— For the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis

31) Thus under Section 154B-7 of the MCS Act, no share or interest of a member becomes effective unless dues of the housing society are paid. Provisions of Section 154B-7 are in negative form, which ensures that the transaction of transfer of share or interest of a member does not take place unless the dues of the housing society are paid. Section 154B-7 is inserted in the MCS Act keeping in mind special circumstances relating to housing society where unpaid dues of maintenance by a member makes other members of the Society suffer. Housing society maintenance charges are mandatory contributions that fund essential daily services like security, water supply, and lift operations, while also building reserves for major repairs. Timely payment ensures uninterrupted facilities and prevents property value depreciation.

32) Cooperative Housing societies have long since shunned their role of a mere collective body for looking after common basic needs of the building. They now function as sophisticated, democratic, financial, and legal entities. The housing societies are now akin to service providers to the residents of the building. They now undertake myriad activities than restricting their role as a collective body looking after basic common

needs of the building. Nowadays modern buildings have several facilities such as gardens, clubhouse, swimming pool, play-areas, mechanical parkings, high speed elevators, etc. Many societies have also adopted sustainable practices such as recycling of water via STP plants, solid waste management facilities, rainwater harvesting, etc. The planning authorities have been encouraging the housing societies to adopt such sustainable practices. Modern housing societies in cities like Mumbai, Thane, Pune, etc have evolved into self-contained micro-townships, focusing on luxury, wellness, and digital convenience. They need to employ large number of staff for security, house-keeping, club-house, operation of office, for maintaining accounts, etc. There are also statutory requirements of maintaining sinking fund, repairs fund, etc. These activities undertaken by housing societies require substantial expenses and most of the societies are dependent only on contributions made by members for meeting that expenditure.

33) In such circumstances, if members stop paying monthly maintenance charges, such action puts strain on the finances of the Society, which finds it difficult to maintain the building. Defaults in payment of monthly maintenance charges many times force the other members to contribute extra amounts in order to ensure that the building and its facilities are maintained. It is keeping in mind these special circumstances relating to a co-operative housing societies that the legislature has consciously incorporated provisions of Section 154B-7 in the MCS Act.

34) The objective behind provisions of Section 154B-7 of the MCS Act has been considered by this Court in ***Tanvi's Diamoda*** (supra). This

Court has dealt with the situation of auction purchaser's liability to pay the past maintenance dues. It is held in paragraphs 12 to 17 of the judgment as under:

> 12. Section 154B 7 is mandatory. The requirement in Section 154B 7 that no transfer becomes effective unless dues are paid is mandatory. The Legislature has used a negative form to show that it is compulsory. It states that a transfer does not take effect unless the dues are paid. This rule applies to all transfers, whether voluntary or through auction. When the amount payable is indisputable or undisputed , the transferee must satisfy this condition. The law requires that statutory conditions must first be fulfilled. Section 154B 7 imposes a specific condition. It states that a transfer becomes effective only when all dues of the society are paid. It also states that the purchaser must apply for membership and the society must process that application in accordance with law. These conditions are equally important. The Legislature intended that societies should not suffer financial loss because a member leaves behind arrears. If societies are compelled to accept transfers without clearance of dues, they will not be able to recover common expenses. This will affect all existing members. The provision therefore protects the financial stability of the society. A cooperative housing society survives on the timely collection of maintenance charges. Members enjoy common facilities because every member contributes. When arrears remain unpaid for years, the society and its members suffer. The law protects the society in such circumstances. Section 154B 7 ensures that the financial structure of the society is not disturbed by transfers that leave arrears behind. It places the responsibility upon the transferee to clear dues when the earlier member defaults.
>
> 13. Membership in a cooperative society is not an unconditional right. It is governed by the Act and the by laws. The society must act fairly and within the framework of law. It cannot impose conditions that the law does not permit. However, it also cannot ignore conditions that the law expressly requires. If Section 154B 7 says that dues must be paid first, the society is duty bound to insist on it. The purchaser's ownership of the flat remains unaffected. What remains incomplete is the entry of his name in the membership register until dues are settled.
>
> 14. Section 154B 12 deals with transfer through a registered document. It gives a member the right to transfer his interest by following required legal procedure. This right is recognized. However, this right is not absolute. It must be read together with Section 154B 7. Both provisions work together. Section 154B 12 explains the process of transfer between individuals. Section 154B 7 explains when such transfer becomes effective in the records of the society. A transfer may

> be valid between the parties, but it becomes effective in the society only when dues are cleared.
>
> 15. When a flat is sold in execution proceedings, the auction purchaser receives a lawful title to the flat. That title cannot be questioned. However, the Cooperative Societies Act still requires that membership must follow the statutory procedure. The auction purchaser cannot skip this legal step. If arrears exist, the society has a right to insist on their payment. The law applies equally to voluntary and involuntary transfers. The statute does not exempt auction purchasers. Its purpose is to ensure that the society is not deprived of legitimate dues.
>
> 16. An auction purchaser may say that he is not responsible for unpaid dues of the previous member. This argument may be accepted only to the extent that he is not personally liable for the earlier default. However, this does not remove the statutory condition. The law does not force him to pay. It only states that the society is not required to record the transfer until dues are cleared. If the purchaser wants membership, he must clear the dues as part of the burden attached to the property. This approach is supported by the language of the statute.
>
> 17. In this background, the legal position becomes clear. The auction purchaser may apply for membership. The society must examine the application in accordance with law. The society may insist on payment of arrears because Section 154B 7 mandates it. Once dues are paid and the application meets the requirements of the Act, the society must admit him as a member. In this manner, the law maintains a balance between the right of the purchaser and the collective interest of the society.

35) In ***Tanvi's Diamoda,*** this Court has considered interplay between provisions of Sections 154B-7 and 154B-12 of the MCS Act, under which a member is entitled to transfer his share, right, title and interest of his property in the Society by way of registered document by following due procedure provided in the Rules or bye laws.

36) Provisions of Section 154B-7 are also considered by this Court in ***Brightland*** (supra) in which this Court has dealt with a situation where there was a serious dispute about the maintenance dues. This Court held as under:

> 29. Since Section 154B-7 is expressly made subject to the provisions of the Act. The provisions contained in Sections 22 and 23 of the Act, would govern the aspect of membership of the housing societies. However, as noted above, Rule 19 of the Rules, 1961, mandates that the person seeking membership of the society shall fulfill all other conditions laid down in the Act, 1960, the Rules and the by-laws. Thus, a harmonious construction of the provisions contained in Sections 22 and 23, on the one part, and Section 154B-7, on the other part, is required to be made. The legislature's anxiety in insisting for the payment of the dues of the housing society before the transfer of interest of the member is appreciable. If the dues of the society are not paid, it would have cascading effect on the orderly management of the affairs of the housing society. Thus, the provisions contained in Section 154B-7 deserve adequate weight.
>
> 30. At the same time, the attendant facts of the case cannot be lost sight of. Where the dues of the housing society are not in dispute or indisputable, the requirement to pay the same before seeking membership can hardly be contested. However, in cases where there is a serious dispute as to what are 'the dues' of the society, the matter cannot be left to the sweet will of the managing committee of the society. Lest the said provision would operate onerously and may be abused to seek unjustified sums from the transferor or transferee disguised as dues of the housing society. Where there is a genuine dispute as regards the dues of the housing society owed by the erstwhile or prospective member of the housing society, determination by the authorities under the Act, 1960, would be warranted. In such a situation, the attendant circumstances, acts and omissions on the part of the parties assume importance.

37) In ***Brightland*** this Court considered the effect of sale of a flat by a secured creditor on 'As is where is' and 'whatever there is' basis and rejected the contention that the said expressions refer to only physical condition of the property. This Court held that a greater responsibility is cast on the person who purchases the property with express superimposed conditions of "As is where is" and "Whatever there is" basis to carry out due diligence and find out for himself not only the condition of the subject property, but also the vulnerability of the title thereto and the obligations in relation to such property. It is held thus:

> 33. I am afraid, the aforesaid stipulation in the sale certificate is of determinitive significance, especially in the face of the express term of the bargain that the sale of the subject flat was on "As is where is" and "whatever there is" basis. The import of the superimposed conditions of "As is where is" and "Whatever there is" basis is not confined to the physical condition of the property which is the subject matter of the sale. Such conditions, in given circumstances, may extend to the quality of title to the subject property and the claims against such property. A greater responsibility is cast on the person who purchases the property with express superimposed conditions of "As is where is" and "Whatever there is" basis to carry out due diligence and find out for himself not only the condition of the subject property, but also the vulnerability of the title thereto and the obligations in relation to such property.
>
> 34. A useful reference, in this context, can be made to a three Judge Bench judgment of the Supreme Court in the case of ***K.C. Ninan v. Kerala State Electricity Board*** wherein the Supreme Court, after a survey of precedents, enunciated the position in law, as under:
>
>> "143. Thus, the implication of the expression "as-is-where-is" or "as-is-what-is-basis" or "as-is-where-is, whatever-there-is and without recourse basis" is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others."
>
> (emphasis supplied)
>
> 35. The aforesaid being the position in law, the question as to whether the Respondent Nos. 3 and 4 were required to discharge the liability to pay the outstanding maintenance/service charges qua the subject premises cannot be determined solely on the basis of the stipulation in the sale certificate that, to the best of the knowledge of the secured creditor (PNB), the subject property was free from all encumbrances. **Therefore, the broad submission sought to be canvassed by Respondent No. 3 that the Respondent Nos. 3 and 4 were not liable to pay outstanding dues towards the maintenance/service charges for the period prior to purchase cannot be readily acceded to.**
>
> *(emphasis added)*

38) Thus in ***Brightland*** this Court did not accept the contention raised by the auction purchaser that they were not liable to pay outstanding dues towards the maintenance/service charges for the period prior to

purchase. However, this Court found that there were disputes about the exact amount payable by the past owners. Also, this Court found that the Society had not demanded the past dues from the purchasers. The Society in that case had not refused to admit the purchasers as members. These were the peculiar circumstances why this Court in ***Brighland*** upheld the order of the authorities directing admission of purchasers as members.

39) In ***Tanvi's Diamoda*** (supra) this Court has considered the ratio of the judgment in ***Brightland*** and has held in paragraphs 18 to 23 of the judgment as under:-

> 18. I now consider the judgment in the Brightland case cited by the respondent. I examine it only to see whether its reasoning applies to the present facts. I do so keeping the focus on what the evidence shows and what the statute requires.
>
> 19. In this case, there is no dispute about the amount owed to the housing society. The dues are admitted. The single question is whether an auction purchaser can seek membership without paying these dues, keeping in view Sections 154B 7 and 154B 12.
>
> 20. The judgment relied upon by the respondent was delivered in very different circumstances. In that case, the society claimed arrears going back many years. The auction purchasers questioned both the existence and the calculation of those dues. They repeatedly asked the society to provide a clear break up. The society did not respond. The record showed uncertainty about the actual amount payable. Because of this uncertainty, the Court held that Section 154B 7 could not be applied without first determining the dues through proper legal proceedings under Section 91 or Section 154B 29. The Court noted that if Section 154B 7 is used without clarity of dues, societies may misuse the provision to demand amounts that are not supported by evidence. It was for this reason that the Court permitted deemed membership under Section 22(2).
>
> 21. This factual foundation does not exist here. The dues are admitted and undisputed. There is no confusion about the amount. In the Brightland judgment itself, the Court made it clear that when dues are definite, the requirement under Section 154B 7 must be

> followed. Paragraph 30 of that judgment states that if the amount claimed by the society is not in dispute, then payment of the dues before seeking membership cannot be avoided. This principle applies squarely to the present case.
>
> 22. In the Brightland case, this Court intervened because the society had failed to crystallise dues, failed to respond to repeated requests, and failed to issue a proper communication. That case turned on uncertainty and prolonged inaction. None of those elements are present here. The dues are admitted. The society communicated its refusal within time. The statutory mandate must therefore prevail.
>
> 23. In these circumstances, Sections 154B 7 and 154B 12 do not permit an auction purchaser to demand transfer of membership without clearing the dues. The society's insistence on prior payment is lawful. The judgment relied upon by the respondent does not support his case because the reasoning in that judgment depended on facts that are entirely absent here.

40) Thus, in ***Tanvi's Diamoda*** (supra) this Court has dealt with almost similar case where the Flat was purchased in an auction and there were past dues of the ex-member. This Court has held that auction purchaser cannot seek membership without paying past dues of maintenance. It is held that SARFAESI Act does not water down the obligations to clear past maintenance dues. Even in ***Brightland*** (supra) this Court has not accepted the contention raised by the auction purchaser that they were not liable to pay outstanding dues towards the maintenance/service charges for the period prior to purchase.

41) Mr. Jabbar has relied on ***Banganga Anurag*** (supra), which considers ratio of both the judgments in ***Brightland*** and ***Tanvi's Diamoda*** (supra). It is held by this Court in ***Banganga Anurag*** as under:-

> 28. This very question came up in the decision of this Court in ***Tanvi's Diamoda Cooperative Housing Society Ltd.*** In that case, the buyer had not disputed the dues. He had accepted the amount and did not question the society's calculations. The Court held that when there is no dispute about the dues, then Section 154B-7 must be applied

> strictly. The buyer cannot seek membership without first clearing the outstanding amounts. Payment of dues is a legal precondition and cannot be avoided.
>
> 29. In contrast, in the earlier case of ***Brightland Cooperative Housing Society Ltd.***, the Court dealt with a situation where the dues were seriously disputed. There was no clarity from the society. No proper details were given, and the amounts were questionable. In that background, the Court held that if there is a real and serious dispute about the amount or the legality of the dues, then the society cannot use Section 154B-7 as a weapon to indefinitely block membership. In such a case, the law expects the Registrar or the concerned authority to first examine the correctness of the dues, either in a Section 91 dispute or Section 154-B-29. Only when the dues are determined and no longer disputed can the society insist on full payment before admitting the buyer as a member.

42) Thus, in ***Banganga Anurag*** this Court has held that where the buyer has not disputed the dues, the case would fall within the ratio of the judgment in ***Tanvi's Diamoda***. However, where dues are seriously disputed and there was no clarity from the Society, the case would fall within the ratio of the judgment in ***Brightland.*** This Court thereafter proceeded to hold in ***Banganaga Anurag*** that case fell within the framework of law laid down in ***Tanvi's Diamoda***. It is held in paragraphs 35 to 38 as under:-

> 35. Unlike in Brightland, the present case does not show any delay or silence from the Society. In Brightland, the society did not provide any clear break-up of dues despite repeated requests, and it was only much later that a large amount was suddenly demanded. That conduct was found to be unreasonable and the Court, therefore, protected the buyer from arbitrary treatment. In contrast, in this case, the Society issued the demand within the 90- day period. It clearly explained the reasons for refusal and listed out the dues with supporting documents. There was no inaction or casual behaviour from the Society. **This places the case squarely within the framework laid down by this Court in Tanvi's Diamoda.** There too, the purchaser had bought a flat in auction and dues were outstanding. The Society refused membership until the dues were cleared. The Court upheld that refusal, stating that society dues survive the auction and must be paid before seeking membership. The Court clearly laid down that SARFAESI auction purchasers are not exempt from society dues and cannot rely on the auction to defeat the statutory protection granted to societies under Section 154B-7.

36. Further, in Tanvi's Diamoda, the Court rejected the argument that refusal of membership should be overlooked due to a pending dispute. It noted that unless the dispute is genuine and raised promptly, and unless the buyer approaches proper legal forums like the Registrar or cooperative court under Section 91, the society cannot be blamed. Respondent No. 3, in the present case, never initiated any such proceeding. He never sought an official determination on what portion of the dues was illegal or excessive. Instead, he refused to pay and demanded membership.

37. In the present case, the Society has made it clear that the amount demanded from Respondent No. 3 consists of four well- identified categories: unpaid maintenance charges, unpaid repair charges, unpaid conversion charges (for converting the society's land from leasehold to freehold), and interest on the delayed payments. This detailed break-up, often referred to as "bifurcation," was formally shared by the Society with R3 before his membership application was rejected. This bifurcation shows exactly how the total dues are made up. The Society has given proper communication, explaining the basis of each head of demand. What is most important to note is that Respondent No. 3 has not challenged the accuracy or computation of these charges. He has not pointed out any mathematical error or any illegality in the categories themselves. He has not said that the maintenance or repair charges are wrongly calculated or that the conversion charges were never approved. His only argument is that these dues should be recovered from the previous flat owner and not from him. However, this argument cannot be accepted in law. Once Respondent No. 3 purchased the flat under an "as-is-where-is" and "whatever-there-is" condition through an auction, he stepped into the shoes of the previous member. The dues are not personal to the earlier member; they are linked to the flat. Therefore, whoever becomes the new owner inherits the liabilities attached to the flat unless there is a contract to the contrary or the society has waived the dues. Hence, the facts of this case align completely with Tanvi's Diamoda and not with Brightland.

38. This Court's decision in Tanvi's Diamoda is recent, authoritative, and directly applies to auction purchasers like Respondent No. 3. It emphasises that the rights of housing societies to recover their dues cannot be bypassed by citing auction purchases or vague disputes. The Court made it clear that both the rights of financial institutions under SARFAESI and those of cooperative societies under the MCS Act must be respected. One cannot override the other. The situation here reflects Tanvi's Diamoda such as an auction purchase, known society dues, detailed communication by the society, and refusal of membership based on unpaid charges. Accordingly, the legal position is settled. Membership cannot be claimed unless the dues are cleared. The alleged dispute lacks merit and was never taken to the proper

forum for determination. In conclusion, the facts of the present case fit squarely within the pattern laid down in Tanvi's Diamoda. The protection of Section 154B-7 applies in full force. The reliance on Brightland is misplaced and does not help Respondent No. 3. The Society's refusal of membership was lawful, justified, and in strict compliance with the law.

(*Emphasis added)*

43) In my view, the judgments of this Court in ***Brightland***, ***Tanvi's Diamoda*** and ***Banganga Anurag*** provide direct answer to the issue involved in the present case. In all the three cases, the sale was on 'As is Where is Basis & What Is As Is Basis'. Thus, Padalkars have inherited the liability attached to the Flat. In that sense, the charge created on the Flat by virtue of provisions of Section 154B-14 gets attached to Padalkars as well. Section 154B-14 provides thus:-

> **154B-14. Charge of society in respect of share and interest of Member.—**
> A society shall have a charge upon share and interest of a Member or past Member or deceased Member to the extent of dues payable by such Member to the society.

44) In my view, provisions of Section 154B-14, far from assisting the case of Padalkars, actually militates against them. Once the dues payable by the member forms charge of the society on the flat, with purchase of the Flat by Padalkars, the liability gets transferred to them.

45) In view of the above discussion, Padalkars cannot escape the liability to pay maintenance dues in respect of the Flat in respect of the period prior to taking over possession thereof. The Assistant Registrar and Joint Registrar have grossly erred in not appreciating the statutory schemes of the MCS Act and in ignoring specific stipulations of Sale

Certificate as well as the provisions of Section 154B-7 of the MCS Act. Their orders are clearly unsustainable and are liable to be set aside.

46) I am not impressed by the submissions of Mr. Jabbar that filing of a Dispute under Section 91 of the MCS Act by the Society for recovery of maintenance dues would disentitle it from relying on provisions of Section 154B-7 of the MCS Act. Even if Padalkars are not admitted as members of the Society, the society is entitled to recover maintenance dues pending in respect of the Flat. The Society has both remedies open. It can oppose grant of membership to Padalkars and can also initiate action for recovery of dues in respect of the Flat. If submissions of Mr. Jabbar about exercise of parallel remedies is accepted, the same would result in an absurd situation where the purchaser may continue to occupy the Flat in absence of membership but the Society would be prevented from taking any action for recovery of dues. As per Section 154B-14 of the MCS Act, unpaid maintenance dues form a charge of the society on the Flat and the Society is accordingly entitled to recover the same by selling the Flat. For sale of the Flat, the Society can initiate action for adjudication of the dues either under Section 154B-29 or under Section 91 of the MCS Act. Merely because the Society chooses the remedy under Section 91 of the MCS Act, it does not mean that dues get converted into disputed amount thereby making the provisions of Section 154B-7 inapplicable.

47) I am also not impressed by the submission of Mr. Jabbar that by filing a Dispute under Section 91 of the MCS Act, the Petitioner-Society has impliedly admitted that Padalkars have become members of the Society. Admission as members of the Society needs to be a conscious

act and the Society has specifically declined to admit Padalkars as its members. Admission to membership in such circumstances cannot be inferred merely on account of exercise of remedy under Section 91 of the MCS Act. Padalkars claim to be the members of the society and under clause (b) of Sub-section 1 of Section 91, '*a person who claims to be a member of the society*' is also included in the enumerated list against whom the society can file a Dispute. Therefore mere filing of Dispute under Section 91 of the MCS Act does not automatically confer membership on Padalkars. Also, in the peculiars facts of the case, Purohits are no longer owners of the Flat and since the Society is entitled to recover dues by selling the Flat occupied by Padalkars, they are impleaded in the Dispute. However, their impleadment as parties to the Dispute would not automatically elevate them to a status as members.

48) I am also not inclined to dismiss the Petition only on account of allegation of suppression. True it is that the Petitioner-Society ought to have disclosed the factum of filing of Dispute under Section 91 of the MCS Act in the memo of the Petition. It appears that the Dispute was filed during pendency of the Revision before the Joint Registrar. In ordinary circumstances suppression of material fact by the litigant disqualifies such litigant from obtaining any relief. Reliance by Mr. Jabbar on judgment of the Apex Court in ***K. D. Sharma*** (supra) and of this Court in ***Ambada Seva Sahakari Sanstha*** (supra) in that regard is apposite. However, it is equally well settled that the suppression must be of a material fact. As held above, pendency of the Dispute has no relevance to the issue of membership and in that sense, non-disclosure of filing of those proceedings before the Cooperative Court is not really

fatal to the case of the Petitioner. It is held in ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar***[9] as under:

> 13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. **But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken** [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] ....
>
> *(emphasis added)*

49) In ***State (NCT of Delhi) v. BSK Realtors LLP***[10], the Apex Court has held that the fact suppressed must be material which would have effect on the merits of the case. It is held that the principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process. It is held thus:

> 37. Law is well settled that the fact suppressed must be material in the sense that it would have an effect on the merits of the case. The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust. Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process.

50) In the facts and circumstances of the present case, I am not inclined to decline exercise of jurisdiction under Article 227 of the Constitution of India only on account of omission on the part of the Petitioner-Society in disclosing filing of Dispute under Section 91 of the MCS Act before the Co-operative Court.

9 (2004) 7 SCC 166
10 (2024) 7 SCC 370

51) Reliance by Mr. Jabbar on the judgment of the Apex Court in *Garment Craft* (supra) is also inapposite. This Court is not satisfied with the ultimate conclusions reached by the Assistant Registrar and Joint Registrar and therefore error of fact and law committed by them in the impugned orders cannot be ignored. On the contrary, this Court has arrived at a conclusion that Padalkars are not entitled to be admitted as members of the Society without first clearing the past maintenance dues. Therefore, exercise of jurisdiction under Article 227 of the Constitution of India in the present case is clearly warranted.

52) Before parting, it would be necessary to take note of a fair stand taken by the Society where it has offered to waive off interest on maintenance dues payable upto the date of purchase of the flat by Padalkars and has offered to accept only the principal amount of dues upto the date of purchase. This is on account of offer made in the letter dated 19 March 2023 (for partial waiver of interest). However the society has suggested that it would charge interest on that principal amount of maintenance dues from the date of purchase. Accordingly a statement has been submitted by the Society towards the offer which indicates that the dues before purchase along with interest comes to Rs. 7,22,079/-, but the society is willing of waive interest amount of Rs. 3,30,837/-. This proposal, when put across by the Court to Padalkars during the course of hearing, was however declined by them. Though the Petition is being allowed, in my view, it would be in interest of justice to keep this offer of the society open for being opted by Padalkars. It is for Padalkars to take a call on the offer.

53) Conspectus of the above discussion is that the impugned orders passed are indefensible and are liable to be set aside. Petition accordingly succeeds and I proceed to pass the following order:-

(i) Impugned order dated 4 January 2024 passed by the Assistant Registrar and order dated 7 April 2025 passed by the Joint Registrar are set aside.

(ii) In view of the readiness expressed by the Petitioner-Society, if Padalkars pay the principal amount of past dues without interest upto the date of purchase, but with interest post the date of purchase, within 6 weeks, the Society shall admit Padalkars as its members.

(iii) The proceedings for recovery of society dues shall be decided uninfluenced by the observations made in the judgment.

54) Writ Petition is **allowed** in above terms. ***Rule*** **is made absolute**. There shall be no orders as to costs. In view of the disposal of the Writ Petition, Interim Applications do not survive and stand disposed of.

[SANDEEP V. MARNE, J.]