

MHC0120000052023



**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO.
I, PUNE.**

(Presided over by Smt. Anju Jadhav, Judge)

Dispute No.03/2023

**Mr. Nilesh Balkrushna
Mahulkar.**

... Disputant

V/s

**Solanki Complex Co-operative
Housing Society Ltd. and others.**

...Opponents

ORDER BELOW EXH. NO. 38
(On dated 30/04/2026)

1. The disputant has filed present dispute and is challenging the election conducted by the opponents for the term 2022-23 to 2026-27.
2. Disputant states that the opponents were served with the notice to produce documents, but the opponents have not filed/produced the original documents on record as per said notice to produce.
3. Disputant contended that the opponents have willfully not produced the documents on record with the sole intention to delay the matter and harass the

disputant. Due to non-availability of documents the disputant loses hope and surrender before opponents.

4. It is submitted that the documents, which are included in list in exhibit i.e. notice to produce are very crucial pieces of evidence in the said dispute and it will be very important and helpful to the Hon'ble Court to come to proper conclusion and decide the matter on merit. The opponents avoided to produce the said documents, disputant is relying on the photocopy copies of the said documents. These copies of the said documents are treated as secondary evidence and it be exhibited.

5. It is therefore prayed that to allow the application and grant permission to lead secondary evidence of documents mentioned in notice to produce and which are produced with separate list accompanying this application.

6. Opponent nos. 1, 3 to 9, 11, 12 failed to file say, hence no say order passed against them on the application.

7. Heard Ld. Adv. Shri. Rohit Rajgurav for disputant. Opponents and advocate remained absent for argument.

REASONS

8. Disputant in the present dispute has challenged the

election process of opponent no. 1 society conducted by opponent no. 2 shown to have taken place from 19/11/2022 to 18/12/2022. Disputant sought the declaration that the election of opponent nos. 3 to 8 be declared illegal and set aside their election.

9. Disputant has given the notice to produce to opponent nos. 1, 3 to 9 and 11 at Exh. 27 and notice admit facts at Exh. 28. The counsel for opponent nos. 1, 3 to 9 and 11 has filed pursis at Exh. 29 and denied the possession of the documents, which are mentioned in the notice. Further submitted that the document nos. 3 to 12 are in the possession of Election Officer.

10. Disputant has given notice to produce to election officers at Exh. 39. But Election Officer failed to produce documents.

11. Disputants in the present application requested permission to lead secondary evidence under Section 66 of Evidence Act, with respect to the documents which are mentioned in the notice to produce.

12. To decide the application, I have gone through Section 58 & 60 of Bhartiya Sakshya Adhiniyam, 2023, which is reproduced as under:-

“Sec.58. Secondary evidence:- Secondary evidence includes”-

- i. Certified copies given under the provisions hereinafter contained;
- ii. Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- iii. Copies made from or compared with the original;
- iv. Counterparts of documents as against the parties who did not execute them;
- v. Oral accounts of the contents of a document given by some person who has himself seen it;
- vi. Oral admissions;
- vii. Written admissions;
- viii. Evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in court, and who is skilled in the examination of such documents.

“Sec.60. Cases in which secondary evidence relating to documents may be given”:- Secondary evidence may be given of the existence, condition or contents of a document in the following cases, namely:-

(a) when the original shown or appears to be in the possession or power –

- (i) of the person against whom the documents is sought to be proved; or
- (ii) of any person out of reach of, or not subject to, the process of the Court; or
- (iii) of any person legally bound to produce it, and when, after the notice mentioned in Section 64, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) When the original is of such a nature as not to be easily movable;
- (e) When the original is a public document within the meaning of section 74;
- (f) When the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India, to be given as evidence;
- (g) When the originals consist of numerous accounts or other documents which cannot conveniently be

examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation.- For the purposes of-

(i) Clauses (a), (c), and (d), any secondary evidence of the contents of the document is admissible.

(ii) Clause (b), the written admission is admissible.

(iii) Clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

(iv) Clause (g), evidence may be given as to the general result of the documents by any person, who has examined them, and who is skilled in the examination of such document.

11) Disputant requested permission for secondary evidence with respect to the documents mentioned in the notice to produce at Exh. 39. The possession of the original documents is not denied by the election officer. The election officer has not produced the original documents against whom the documents is sought to be proved. Hence, it is necessary to grant permission to the disputant to lead the secondary evidence with respect to the documents mentioned in the notice to produce. Hence, following order.

ORDER

1) The application is allowed.

2) Permission is granted to the disputant to lead secondary evidence with respect to documents mentioned in the notice to produce at Exh. 39.

4) No order as to cost.

(Smt. Anju Jadhav)

Place: Pune

Judge,

Date: 30/04/2026

Co-operative Court No. I, Pune.