

JP CHAVAN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7919 OF 2012

Bombay Middle Class cooperative ... Petitioner  
Housing Society Ltd.**Versus**

Bhagwandas M. Bajaj and others ... Respondents

Mr. J. S. Kini i/by Mr. Suresh Dubey for the petitioner  
Mr. Vijay Patil, for Respondent No. 1  
Mr. S. D. Rayrikar, AGP for Respondent Nos. 2 to 4**CORAM : N. M. JAMDAR, J.****DATE : 2 April 2013**

P.C.

1. Heard learned counsel for the parties.
2. The learned counsel for the petitioner, relying on Bye-Law 69 (xiv) of the Petitioner Society, states that the observation of the revisional authorities that the charges which are sought to be recovered by way of recovery certificate is not tenable in law, is not correct. The learned counsel has also submitted that the decision in the case of *Venus Co-op. Housing Society Vs. J.Y. Detwani reported in 2002-Laws (Bom)7-127* which is relied upon by the respondent is not applicable in the facts and circumstances of the present case. The learned counsel for the petitioner submitted that all the members of the petitioner society who are using the premises for commercial purposes are also paying charge at the same rate as respondent no.1 and those members have not raised any objection.
3. The learned counsel for respondent No.1 submits that the

respondent No.1 is being singled out and charged excessively. He further submits that the grievances of the petitioner cannot be adjudicated in the present proceedings.

4. Rule.

5. The petitioner will deposit an amount of Rs.6,31,000/-, which is directed to be refunded to respondent No.1 by the revisional authority, within a period of four weeks from today with the registry of this Court.

6. Upon deposit of the said amount, the registry will invest the same in fixed deposit initially for a period of six months and if no application is filed by respondent no.1 for withdrawal during the said period, the registry will invest the said amount in longer term fixed deposit.

7. Learned counsel for the respondent No.1 submits that the petitioner should be directed to pay an amount of Rs.6,31,000/- with interest as the order passed by the revisional authority is dated 21 March 2011. It is clarified that this point will be taken into consideration at the time of hearing of the petition.

8. In view of the submission of the learned counsel for the respondent that the petitioner will have to get the substantive right adjudicated by way of proceedings under Section 91 of the Maharashtra Cooperative Societies Act, it will be always open to the petitioner to do so.

(N. M. JAMDAR, J.)