

(2025) 12 BOM CK 1683
In the Bombay High Court
Case No : Writ Petition No.16261 Of 2025

Samir Narain Bhojwani

APPELLANT

Vs

Assistant Registrar C.S

RESPONDENT

Date of Decision : 12-12-2025

Acts Referred:

Maharashtra Cooperative Societies Act, 1960 — Section 23(2), 37
Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2025) 12 BOM CK 1683

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : S.U. Kamdar, Gauraj Shah, Ritika Rajeev, Sulbha D. Chipade,
Pradeep Thorat, R.U. Deo, Hrutvi Narvekar, Aditya Lele, Prashant P. Kulkarni,
Rachana Mamnani

Final Decision : Dismissed

Judgement

Amit Borkar, J

1. The petitioner has questioned the Judgment and Order dated 18 November 2025 passed by the revisional authority. The revisional authority confirmed the Judgment and Order dated 7 August 2025 passed by the appellate authority under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. By the said order, membership was conferred on respondent No.2.

2. The facts giving rise to the present writ petition may be stated in brief. The petitioner submits that by an allotment letter, flat No. B-3 situated on the 22nd floor of respondent No.3 society known as Bay View CHS was allotted to Mr. Priyank Hemani. On 5 November 2015, Mr. Priyank Hemani purchased the flat under an agreement for sale dated 5 November 2016. An arbitral dispute arose between the petitioner and Bombay Slum Redevelopment Corporation Limited. The Arbitrator by Award dated 7 September 2018 directed that if within four months the respondent failed to pay Rs.54.03 crore or failed to surrender 3.63 flats in Wing B, the claimant would be entitled to sell 0.63 flat in Wing B and

three flats out of nine flats. These nine flats consisted of two flats allegedly transferred by the respondent to Mr. Kiran H. Hemani and seven flats allegedly transferred to Mr. Priyank Hemani. The petitioner contends that despite the Award, and with an intent to defeat the petitioner's claim in the arbitral proceedings, Mr. Priyank Hemani sold the flat to respondent No.2 by a registered agreement dated 19 September 2019.

3. The arbitral Award dated 7 September 2018 was challenged by BSRCL in Commercial Arbitration Petition No. 527 of 2019. This Court set aside the Award. The petitioner preferred Commercial Appeal No. 30 of 2023. This Court by order dated 7 July 2023 set aside the order dated 13 September 2019. BSRCL filed Civil Appeal No. 7247 of 2024 before the Supreme Court. The Supreme Court on 8 July 2024 set aside the Judgment and Order dated 7 July 2023. The Supreme Court clarified that the interim order passed in the Commercial Appeal under Section 37 would continue during the pendency of the appeal. The matter was remanded to this Court for adjudication under Section 37.

4. Respondent No.2 on 23 March 2021 submitted a membership application to respondent No.3 on the basis of the registered agreement dated 19 September 2019 executed by Mr. Priyank Hemani in his favour. Respondent No.3 society on 14 May 2021 rejected the application. Respondent No.2 thereafter filed an appeal under Section 23(2) on 27 February 2025 before respondent No.1 seeking membership of flat No.3 on the 22nd floor of Wing B.

5. After learning about the pendency of the appeal, the petitioner filed an intervention application. The appellate authority, without considering the intervention application, allowed the appeal filed by respondent No.2 by Judgment and Order dated 7 August 2025.

6. Aggrieved by the order dated 7 August 2025, the petitioner filed Revision Application No.176 of 2025 before respondent No.4. Respondent No.4 by order dated 18 November 2025 dismissed the revision. The petitioner has therefore approached this Court by filing the present writ petition. The society has also filed Writ Petition No.16634 of 2025 challenging the order dated 7 August 2025 passed by the appellate authority.

7. Mr. Kamdar, learned Senior Advocate for the petitioner, invited attention to recital A(vii) of the agreement for sale executed by Mr. Priyank Hemani in favour of respondent No.2. The recital records that all recitals, terms, conditions, and obligations of the vendor under the agreement dated 5 November 2016 shall form an integral part of the subsequent agreement and shall bind the purchaser in the same manner as they bind the vendor. He submitted that the arbitral Award treated the flat in question as security available to the petitioner in the event of non-payment by the respondent in the arbitration proceedings. He submitted that although the Award stands set aside, the interim order dated 10 February 2020 passed by this Court continues to operate. The interim order contains specific observations regarding the flat in question. He submitted that

the appeal filed by respondent No.2 was instituted after more than two years without any application for condonation of delay. He submitted that these circumstances confer locus on the petitioner to participate in proceedings under Section 23(2) of the MCS Act.

8. Mr. Kulkarni, learned Advocate for the petitioner, submitted that although the society did not file a revision against the order of the appellate authority, the society is an aggrieved party and is entitled to maintain the present writ petition. He submitted that the appellate authority acted without jurisdiction in entertaining an appeal filed after more than two years without an application for condonation of delay. He submitted that in the revision filed by the co-petitioner, the society opposed grant of membership, and therefore the society possesses sufficient locus to file the present writ petition even though it did not file a revision against the appellate order under Section 23(2) of the MCS Act. He prayed for setting aside the order of the revisional authority.

9. In response, Mr. Thorat, learned Advocate for respondent No.2, submitted that flat No. B-3 on the 20th floor is not covered by the interim order dated 10 February 2020. He submitted that flat No. B-4 on the 22nd floor was the subject of the interim relief, and it was for that flat that a Receiver was appointed to enforce the Award. He submitted that no subsisting right is available to the petitioner on the date of the revision application, on the date of its decision, or as of today. He submitted that the Award treating flat No. B-3 as security stands set aside. He submitted that although an appeal under Section 37 is pending, the Award does not survive once it is set aside under Section 34 of the Arbitration and Conciliation Act. He submitted that proceedings under Section 23(2) of the MCS Act concern only conferment of membership, which is an independent issue, and rights relating to immovable property shall abide the outcome of substantive proceedings. He submitted that conferment of membership on respondent No.2 does not affect the petitioner because the petitioner only asserts a monetary claim against the vendor. He submitted that no right of the petitioner stands crystallized in flat No. B-3 on the 22nd floor. He submitted that the arbitration proceedings do not create locus in favour of the petitioner to participate in, or challenge orders passed in, proceedings under Section 23(2) of the MCS Act. He further submitted that the housing society cannot directly invoke writ jurisdiction against an order of conferment of membership when it failed to file a revision against the appellate order. According to him, by not filing a revision, the society accepted the conferment of membership on respondent No.2. He submitted that merely filing a reply in the revision filed by the co-petitioner cannot be construed as a challenge by the society to the appellate order. He submitted that in the absence of a revision challenging the order of the appellate authority, the writ petition filed by the society is not maintainable. He therefore prayed for dismissal of both writ petitions.

Reasons:

A. The legal nature of proceedings under Section 23(2):

10. Section 23(2) governs disputes relating to acceptance or refusal of membership in a cooperative society. The scope of this provision is narrow. The appellate authority is required to examine only one question. That question is whether the applicant before it is entitled to be admitted as a member of the society in accordance with the Act, the Rules and the bye-laws. Nothing more arises for consideration in such proceedings. A proceeding under Section 23(2) does not determine ownership rights in the flat. It does not declare title. It does not decide civil disputes relating to contractual obligations or rights arising under an arbitral award. The statute has created a limited and specific jurisdiction. The authority must confine itself to that jurisdiction. A party who asserts a proprietary claim or an equitable claim in respect of the flat must approach the civil court or the arbitral forum where such claims can be fully adjudicated after recording evidence and considering all surrounding circumstances. The appellate authority cannot travel outside its limited sphere. It cannot treat membership proceedings as a substitute for deciding complicated questions of title, possession, enforcement of security, or monetary claims. Those issues must be decided only by a competent court or tribunal under the relevant enactments. The authority must therefore keep a clear distinction between membership rights and ownership rights. Entitlement to membership is a statutory matter. Entitlement to the flat itself is a substantive civil matter. While deciding an appeal under Section 23(2), the authority must ensure that the inquiry remains confined to whether the applicant has complied with the requirements for membership and whether any legal bar exists. The authority must resist any attempt by either party to introduce disputes that properly belong to civil or arbitral proceedings.

B. Effect of the arbitral award and the interim order:

11. The petitioner has placed strong reliance on the arbitral Award dated 7 September 2018. In that Award, certain flats were described as security for recovery of the petitioner's monetary claim. Such a direction in an Award may, in some cases, give limited procedural rights during enforcement. However, in the present matter, this Court must examine the legal effect of later developments. The Award relied upon by the petitioner did not survive. It was set aside by the competent court in proceedings under Section 34 of the Arbitration and Conciliation Act. Once an Award is set aside, it loses its binding force. The petitioner has filed an appeal under Section 37. That appeal is still pending. During the pendency of that appeal, the Supreme Court has protected certain interim orders. These interim orders continue only to the extent they were clearly granted and to the extent they relate to specified properties. The important question therefore is identifying which flat was covered by the interim protection. An interim order cannot be stretched beyond what it actually states. It must be clear, specific and identifiable. All material placed before this Court, including the pleadings, the Award and the interim order of 10 February 2020, consistently points to one fact. The interim protection was granted in respect of flat B-4 on the 22nd floor. The parties also understood it in that manner, and the Receiver appointed under the interim order was in relation to flat B-4.

12. The petitioner has attempted to argue that flat B-3, either on the 20th floor or on the 22nd floor, is also covered by the interim order. There is no supporting material for this claim. No document indicates that flat B-3 formed part of the secured units under the Award. No part of the interim order makes reference to flat B-3. The entire enforcement exercise under the interim orders was linked only to flat B-4.

13. A party who claims a right under an interim order must show a clear link between the order and the property. That clarity is absent here. Therefore, this Court cannot accept the contention that the petitioner has any subsisting or crystallised right in flat B-3 arising out of the arbitral proceedings. Once this position is accepted, the necessary legal consequence follows. There was nothing in law that prevented the society or the appellate authority from considering respondent No.2's membership application relating to flat B-3. The petitioner did not show any legal bar flowing from the arbitral proceedings which would restrain the statutory authorities from acting in the ordinary course under Section 23(2) of the MCS Act.

C. Locus to intervene in Section 23(2) proceedings:

14. A person is permitted to intervene in membership proceedings only when the decision sought to be made will directly affect that person's legal rights in the property concerned. If the person has only a monetary claim or a claim that depends on the outcome of some other future proceedings, such interest is not enough. The mere fact that arbitration or civil proceedings are pending does not, by itself, give someone a right to intervene in membership proceedings under Section 23(2).

15. Applying this settled principle, the petitioner's position must be examined. The petitioner's claim arises out of a monetary dispute against the respondent in the arbitration proceedings. The Award which the petitioner relied upon for securing certain flats as security has already been set aside under Section 34. Though an appeal under Section 37 is pending, the Award has no finality as of today. A set-aside Award cannot create a present and enforceable right in any property. The petitioner cannot assert a right in the flat based on an Award that presently has no legal effect.

16. The petitioner further relies on the interim order passed by this Court. However, as already discussed, that interim protection does not extend to flat B-3. The interim relief was specific, and the flat covered under that relief was identified as B-4. No material shows that flat B-3 was ever brought under the protective umbrella of the interim order.

17. In this background, the petitioner's interest in flat B-3 is neither direct nor legal. It is not a proprietary right. It is not even an equitable right presently recognised by law. It is only a monetary claim against the vendor, dependent entirely on the outcome of the appeal under Section 37 or other recovery proceedings. Such an interest is not sufficient to interfere with statutory

membership proceedings. The petitioner therefore cannot assert that he had a right to be treated as a necessary party in the membership appeal.

18. Recital A(vii) brings the terms of the earlier agreement into the later registered agreement. This clause operates only between the parties who have signed the agreement. It does not, by its own force, create any legal right in favour of the petitioner. The petitioner argues that because certain obligations were carried forward through this recital, its financial claim stood protected. This argument goes to the validity of the registered transaction and to the effect of the arbitral award on the rights of the parties. These issues belong exclusively to the arbitration proceedings and to any appeal filed under the Arbitration and Conciliation Act. They cannot be examined in a proceeding under Section 23(2) of the Maharashtra Cooperative Societies Act. The purpose of Section 23(2) is limited. It decides whether a person is entitled to be accepted as a member of the society. It does not decide ownership rights or the effect of an arbitral award. Even if the petitioner has a monetary claim under the award or against the vendor, that claim does not become a property right in the flat. A financial claim or an uncrystallized right arising out of an arbitral dispute cannot be used to prevent respondent No.2 from seeking membership. The recital cannot elevate the petitioner's claim into a legal right that binds respondent No.2 in the membership process. The petitioner must therefore pursue its remedies in arbitration and in the statutory appeals arising from the award. Whether the registered transaction is valid, whether the flat formed security under the

award, or whether any obligation has been breached, are all matters that the arbitral forum is competent to decide. These questions cannot control or obstruct the statutory process of granting membership to respondent No.2.

19. Once it is found that the petitioner had no established right in flat B-3, the statutory authorities were not bound to hold up membership proceedings on account of the petitioner's objections. The appellate authority was required to proceed in accordance with Section 23(2) and the Rules, without treating the petitioner as someone whose presence was essential for deciding whether respondent No.2 was entitled to membership. The society's locus and the maintainability of its writ petition:

20. The record shows that the society did not file a revision application against the order passed by the appellate authority. The law provides a clear and effective remedy of revision under the Maharashtra Cooperative Societies Act. When a statute creates a specific remedy, the aggrieved party is expected to use that remedy before approaching this Court.

21. Although the society participated in the revision proceedings as a respondent and filed its reply, that participation does not amount to challenging the appellate authority's decision. The law requires an aggrieved party to independently file a revision if it seeks to set aside the appellate order. The society did not do so. Its role in the revision was only as a responding party because the petitioner had

filed the revision. The society merely answered the allegations placed before it. It did not take any positive step to challenge the order passed under Section 23(2). Participation in another party's revision cannot be treated as a substitute for filing one's own challenge. The statutory remedy exists so that the authority hearing the revision can examine the grievance of the party who claims to be aggrieved. If the society believed that the appellate authority had erred, it was expected to assert that grievance by filing a proper revision within the time prescribed. By not doing so, the society accepted the appellate order in the eyes of law. The society made a conscious choice not to file a revision. There is no material to show that the society was prevented from filing one or that any circumstance beyond its control existed. After choosing not to challenge the appellate decision at the appropriate stage, the society cannot now ask this Court to exercise writ jurisdiction to undo an order which it allowed to attain finality. A party that does not invoke its statutory remedy at the correct time cannot later seek to reopen the issue through a writ petition. The society's participation as a respondent in another's revision does not cure its failure to file its own challenge.

22. Once this position is clear, the writ petition filed by the society cannot be treated as maintainable. This Court cannot overlook the availability of an alternative remedy which the society chose not to pursue.

23. The present writ petition at the instance of the society, for the reasons recorded, cannot be entertained.

Effect of pendency of arbitration and appeals:

24. The arbitration proceedings and the appeals arising from them will decide the final rights of the parties in respect of the flat. That process will determine whether any right claimed by the petitioner actually exists and whether such right can be enforced against the vendor or any subsequent purchaser. On the other hand, the appellate and revisional authorities exercised their limited jurisdiction under Section 23(2) of the Maharashtra Cooperative Societies Act. When a court hears a writ petition challenging an order under Section 23(2), the court must confine itself to examining whether the statutory authorities acted within their powers. The court cannot, in such proceedings, enter into questions of ownership which are already the subject of arbitration. If the court were to decide those issues here, it would prejudice the rights of the parties in the arbitration and would also go beyond the scope of the writ jurisdiction.

25. The correct approach, therefore, is to allow the membership conferred by the authorities to remain undisturbed but to clearly state that such membership will not affect the final rights of the parties. The membership shall remain subject to the decision in the arbitration proceedings and the statutory appeals arising from them. This ensures two things. First, the society can function smoothly under its own laws. Second, the petitioner's rights in the arbitration, if finally established,

will be fully protected and can be enforced against the concerned parties. This balances the interests of all sides and avoids unnecessary conflict between the statutory process of the society and the judicial process of arbitration.

26. The writ petition is dismissed. The order of the revisional authority dated 18 November 2025 and the appellate order dated 7 August 2025 shall remain in operation subject to the following declaration. If the petitioner ultimately succeeds in the arbitration or on any appeal under the Arbitration and Conciliation Act and thereby establishes a right, title or interest enforceable against the vendor or against respondent No.2 in respect of the flat, the successful outcome in those proceedings will govern the rights and obligations of the parties and the society.