

**RECOVERY PROCEEDINGS ....** can be filed under:

**SECTION 101** read with Rule 86A to 86F: APPLICABLE to all NON-HOUSING Societies (eg. Milk, Agricultural, Credit, ....)

**SIMPLE Non-Disputable Recovery Proceedings**

(to be filed before local ward Coop. Registrar)

**CANNOT be Filed in COOP. COURT**

**SECTION 154B-29** read with Rule 86A to 86F: APPLICABLE to all HOUSING Societies (includes Premises Society, ....)

**SIMPLE Non-Disputable Recovery Proceedings**

(to be filed before local ward Coop. Registrar)

**CANNOT be Filed in COOP. COURT**

**SECTION 91:** Outstanding dues amount **MUST** be bordering /touching a **DISPUTEABLE** issue, to qualify filing Recovery Application in **COOP. COURT.**

**CANNOT be Filed before local ward Coop. Registrar**

**RECOVERY PROCEEDINGS ....** typically & usually happens due to gross apathy, greed, incompetence, mismanagement & false governance of CHS affairs coupled with lack of humble coordination between members.

90% of Recovery Proceedings, unpleasantness, dushmani, etc.... can be avoided & settled peacefully with a little counseling, leaving aside MC egos /dadagiri.

90% cases of Recovery Proceedings, are false billings, false charges, false head of account, amounts barred by limitation period, not filed by proper procedures

**WHAT IS “DUES”**

**SECTION 154B-1(12):** “dues” means the amount payable by a Member or flat owner to the society and demanded by the society by issuing bill or notice in

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

This means IF Society has not issued Bill /Notice in writing, THEN Society is not entitled to recover its dues via Recovery Proceedings. Natural Justice demands that Member MUST know what he is being billed for.

*(Notes: “DUES” means only legitimate charges prescribed in bye laws no. 64-66 .... and nothing besides this or beyond this)*

## WHO IS “DEFAULTER”

**SECTION 154B-1(11):** “defaulter” means a Member or flat owner or occupier who fails to pay the dues of the society within three months from the date of service of bill or notice or due date of payment, whichever is later.

This means that Member is not a defaulter, IF Bills /Notice are not SERVED to member.

## WHAT IS “BYE-LAWS”

**RULE 9: First bye-laws of a society:** When a society has been registered the bye-laws of the society as approved and registered by the Registrar shall be the bye-laws of the society.

(Notes: Bye Law is a legally enforceable contract between Society & Members. This means IF Bye Laws are violated THEN the contract does not remain legally enforceable.)

(Notes: **Section 73 in Contract Act**, says that IF conditions in contract (akin to bye laws) is violated /broken, THEN member is not bound to pay)

(Notes: There is no provision in Law, to ADOPT Bye-Laws. HOWEVER, there is provision to AMEND Bye Laws, by following procedures prescribed u/s 13 r/w rule 12)

## WHAT IS BYE LAW NO. 71/72:

A Member shall be required to pay simple interest at twenty one percent per annum, or, at such lower rate as may be fixed by the General Body, on the outstanding dues to the Society, from the date the amount was due as prescribed under Bye-law no. 69, till full and final payment by the Member

## WHAT ARE THE LEGAL HEADS OF CHARGES THAT CAN BE LEVIED ON MEMBERS:

**Bye Law 64:** The contribution to be collected from the Members of the Society, towards outgoing and establishment of its funds, referred to in these bye-laws as 'the charges' may be in relation to the following:

(i) Property Taxes, (ii) Water Charges, (iii) Common Electricity Charges, (iv) Contribution to Repairs and Maintenance Fund, (v) Expenses on repairs and maintenance of the lifts of the Society, including charges for running the lift. (vi) Contribution to the Sinking Fund, (vii) Service Charges, (viii) Car Parking Charges, (ix) Interest on the defaulted charges, (x) Repayment of the installment of the loan and interest, (xi) Non-occupancy Charges, (xii) Insurance Charges, (xiii) Lease rent, (xiv) Nonagricultural tax. (xv) Education and Training Fund (xvi) Election Fund (xvii) Any Other Charges.

**Bye Law 65:** The Service charges of the Society referred to at 64 (vii) above shall include:

Salaries, Common Property Taxes, Electricity Charges, Water Charges, Printing, Stationery and Postage, Travelling Allowance, Conveyance Charges, Education Fund, Federation Subscriptions, Audit Fees, Meeting expenses, Legal Charges.

**Bye Law 66:** a. The Committee shall apportion the Share of each Member towards the charges of the Society on the following basis:

*(Notes: only IMP are shown here)*

- i. Property taxes : As fixed by the Local Authority
- ii. Water Charges : On the basis of total number and size of inlets provided in each flat.
- vi. Service Charges: Equally divided by number of flats / units.
- vii. Parking Charges : At the rate fixed by the General Body
- viii. Interest on the delayed payment of Charges : At the rate fixed under the bye-law No. 71.
- x. Non-occupancy charges : 10% ONLY on Service Charges and not on any other charges. (Govt. Order dated 01-08-2001)

### **WHAT IS SECTION 13:**

**(1) No amendment of the by-laws of a society shall be valid until registered** under this Act. For the purpose of registration of an amendment of the by-laws, a copy of the amendment passed, in the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar. Every application for registration of an amendment of the by-laws shall, be disposed of by the Registrar within a period of two months from the date of its receipt.

**(2) When the Registrar registers an amendment of the by-laws of a society OR where an amendment of the bye-laws is deemed to have been registered .... he**

**shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.**

## **WHAT IS RULE 12: Amendment of bye-laws:**

**(1)** Subject to the provisions of this rule, **byelaws of a society may be amended by passing a resolution at a general meeting** of the society held for that purpose.

**(notes: Here General Meeting means ONLY in an ANNUAL GENERAL BODY MEETING u/s 75, wherein bye law amendments provision is mandatory .... This means bye laws CANNOT be amended in SPECIAL GENERAL BODY MEETING)**

**(2)** The society shall give due notice in accordance with its bye-laws to all the members for considering any amendment thereof.

**(3)** An **amendment** shall be deemed to have been duly passed, if a **resolution** in that behalf is passed at a general meeting **by not less than two-thirds of the members present** thereat, and voting.

**(4)** **After the resolution is passed, a copy thereof shall, within a period of two months from the date of the meeting at which the resolution was passed, be furnished to the Registrar along with:**

**a)** a copy of the relevant bye-laws in force with amendments proposed to be made in pursuance of the resolution, together with reasons justifying such amendments.

**b)** four copies of the text of the bye-laws as it would stand after amendment, signed by the officers duly authorised in this behalf by the committee of the society;

**c)** a copy of the notice given to the members of the society of the proposal to amend the bye-law;

**d)** such other information as may be required by the Registrar.

**(5)** On receipt of a copy of the resolution and other particulars referred to in sub-rule (4), the Registrar shall examine the amendment proposed by the society and **if he is satisfied that the amendment is not contrary to the Act or the rules and is in the interest of the society and co-operative movement, he may register the amendment and issue to the society a copy of the amendment certified by him under sub-section (2) of Section 13.** Where the Registrar is of opinion that the proposed amendment may be accepted subject to any modification, he may indicate to the society such modification after explaining in writing his reasons therefor.

**Notes: CHS Bye Laws /Amendments shall not be violating other Laws (BMC, MRTP, FIRE, TREE, IPC, I.Tax, GST, Consumer Protection Act, etc....)**

## WHAT IS SECTION 154B-29:

(1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a housing society for the recovery of its dues or for the recovery of its repairs and maintenance, construction cost and service charges, and on the housing society concerned furnishing a statement of accounts and any other documents as may be prescribed, in respect of the arrears, the Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears.

Explanation: For the purposes of this sub-section, the expression “repairs and maintenance and service charges” means such charges as are so specified in the by-laws of the concerned housing society.

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears, the Registrar may, on his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, as arrears of land revenue. A revision shall lie against such order or grant of certificate, in the manner laid down under section 154 and such certificate shall not be liable to be questioned in any court.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 or any law or provisions corresponding thereto for the time being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.

## WHO IS “MEMBER /OCCUPIER”:

- a) Membership of Society is VOLUNTARY .... (this means FLAT OWNER may refuse to become member of Society)
- b) CHS MEMBER must COMPULSORILY be a Flat Owner. Member/s name MUST reflect in the “I” Register of CHS.
- c) OCCUPIER means anybody in custody /occupancy of Flat, which may include Family members /Relatives /encroachers /others.

## **AGAINST WHOM RECOVERY PROCEEDINGS MAYBE FILED:**

- a) Recovery Proceedings can be filed against “Outstanding Dues” Defaulters and MC members who are convicted of offences of Misappropriation of Society Funds.
- b) Recovery Proceedings has to filed by impleading **FLAT OWNER**, CHS **MEMBER** and **OCCUPIER**/s.

## **HOW MUCH INTEREST MAY THE SOCIETY LEVY ON DEFAULTING AMOUNTS:**

- a) Registered Bye Law no. 71/72, would prescribe 0-21% Simple Interest (Not Compounding Interest)
- b) IF Bye Law no. 71/72 is NOT stamped & signed by Coop. Registrar, THEN Society CANNOT levy of any Interest /Penalty.

## **IS GENERAL BODY RESOLUTION COMPULSORY FOR DETERMINING INTEREST:**

- a) YES: Bye Law no. 71/72 reads: A Member shall be required to pay simple interest at twenty one percent per annum, or, at such lower rate as may be fixed by the General Body.
- b) Hence till Interest is Fixed AND till Interest rate is amended & Stamped & Signed by Coop. Registrar u/s 13 r/w Rule 12, said ANY interest is legally not leviable just simply based on a General Body Resolution.

## **IS BYE LAW NO. 71 (72) REQUIRED TO BE AMENDED FOR FINAL LEVY OF INTEREST:**

- a) YES .... Any bye law related clause that is discussed in GB, needs to be compulsorily amended by following due procedures of Law.
- b) Any type of amendment to any existing clauses of Bye Law, needs to be done under parameters of Section 13 r/w Rule 12. Each Amendment needs to be Stamped & Signed by Coop. Registrar.
- c) IF Amendment is NOT Stamped & Signed by Coop. Registrar, THEN specific bye clause for Interest is not legally enforceable or say recoverable.

## **IF CHS DOES NOT FILE RECOVERY PROCEEDINGS .... THEN CAN ORDINARY MEMBER DO SOMETHING TO FORCE RECOVERY PROCEEDINGS:**

YES .... **Under sub-section 2 of 101 /154B-29**, a ordinary member or even a Public member, can complaint to Coop. Registrar alongwith last Three years Balance Sheet i.e. outstanding dues statement, typically attached with FY balance Sheet .... Submitting that MC is maliciously not filing Recovery Proceedings and that MC is causing loss to CHS by its deficiency and that defaulter amounts may become non-recoverable or that defaulter amounts may become disputable and that Registrar should take suo-moto cognizance & initiate proceedings, at costs & consequences of CHS.

### **WHICH ARE “SECTIONS” & “RULES” & BYE-LAWS ARE APPLICABLE FOR RECOVERY OF OUTSTANDING DUES:**

- a) Original Section 101, is applicable for all NON Housing Societies (Agricultural, Milk, Credit type societies....)
- b) Amended SECTION 154B-29, is applicable for all Housing & Premises Societies.
- c) Procedural aspects has compulsorily be within Rule 86A to 86F
- d) Determination of Legitimate charges are within Bye law no. 64-66 & 7/172.

### **IS LIMITATION ACT APPLICABLE TO RECOVERY PROCEEDINGS:**

- a) MCS Act is a State Law.
- b) MCS Act does not restrict or prescribe or bar the Limitation Act.
- c) Limitation Act is a Central Act.
- d) Constitutional Article 254 mandates that: A central act shall always prevail /override adverse provisions of state law.
- e) LIMITATION ACT: Section 3. Bar of limitation: (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

### **CAN SOCIETY PUBLISH NAMES OF DEFAULTERS:**

YES .... MC may publish /display \_DEFAULTER NAMES & AMOUNT\_ in ANY place inside the CHS premises (which includes CHS Notice Board) .... \*PROVIDED\* the MC is willing to be Criminally prosecuted for offences like: Intimidation, "irreversible" Defamation, Slander, Breach of Trust, Harassment, Nuisance, Extortion, etc.... and IF MC is lucky & IF Defaulter is from certain backward /reserved category then .... MC also becomes liable for offences of Atrocity etc.... \_(BTW .... punishment provides for atleast Three Years FREE Lodging & Boarding, in any State Prison)\_

Prosecution on MC's can be done under Indian Penal Code, Atrocity Acts & Prevention of Social Disability Act.

Such Publications /Displaying are read by other Members, Relatives, Friends, all types of Visitors, Vendors .... causing direct slander /defamation /harassment to Member/s.

Such nefarious nuisance by some MC's is akin to circumventing the available Legal "Recovery Proceedings" and using such illegal arm-twisting tactics to recover legitimate /illegitimate money from Defaulters. **\*Once Person is defamed ... such defamation CANNOT be reversed back EVEN AFTER defaulter member has paid back his dues\***. Criminal Prosecution ALSO can be initiated against Member/s who Propose & Second such minuted General Body Resolutions.

RBI /Banking Laws has special inbuilt provisions which resulted from Supreme Court judgements that allows Publishing WILFUL Defaulter names & photos .... but this is done by following extensive procedures of Law ... this is not available under Societies Act & Rules. RBI law says WILFUL Defaulter means deliberate intention of not paying even though capable of paying, dues are not under dispute. Defaulter who proves documentarily that defaulter Amounts are under dispute .... such defaulter are not willful defaulters and such defaulter names cannot be published as per RBI Laws. CHS MC's miserably & sadly think that they have RBI Bank Powers to publish defaulter names.

## **HOW DISPUTES or RECOVERY PROCEEDINGS ARE CREATED /CHALLENGED:**

- a)* Charging Water bills on Flat-to-Flat basis .... Whereas bye-law no. 69 provides for per Inlet basis
- b)* Legal Charges levied only to individual member
- c)* Fines /Penalties of any kind (extended grill, encroachments, etc.... )
- d)* False or excessive non-occupancy charges
- e)* Levy of Service & Maintenance Charges on "per-square-foot" basis .... Instead of per Flat /Unit basis .... As prescribed under bye-law no. 65-67
- f)* levy of Interest that is not GB approved resolution and registered in the bye laws
- g)* Filing Recovery Proceedings after considerable Time .... Thus attracting provisions of Section 3 of Limitation Act .... (this means filing recovery proceedings after limitation period of Three Years)
- h)* U/s 59 Indian Contract Act, Member may direct Society that payment being made is to be adjusted only against Principal and not against Interest or any



other illegitimate head of account. Here Society becomes bound to adjust payment only against Principal and not against Interest. IF member does not put this Notice alongwith payment THEN Society is at liberty to adjust such received payment against any legitimate head of account. *(there are several judgements on this by HC /SC)*

*i)* so many others....

## **PROCEDURES FOR FILING RECOVERY PROCEEDINGS:**

- a)* Service of Recovery Notices to Defaulter members .... Within Recovery period .... For purposes of Natural Justice .... Total Three Notices, with gap of 20 days each, by annexing “Account Statement” (not ledger summary) from previous Zero Balance onwards .... to enable defaulter member to point our errors .... to enable Society to correct those errors, issue corrected “Account Statement” (not ledger summary)
- b)* Passing Resolution in any General Body meetings, to file Recovery Proceedings against Defaulters .... Certified Extract of such GB Resolution shall be required to determine authority to MC to file Recovery Proceedings.
- c)* “Account Statement” (not ledger summary) from previous Zero Balance onwards .... to be annexed with Recovery Application
- d)* General Body Resolution of THEN date passing & approving Interest rate
- e)* Certified Extract of Bye Laws no. 71 /72, showing Stamp & Sign of Coop Registrar approving of Interest Rate.
- f)* Approx 4% of the Recovery Claim amount goes for Court Fees, RBI challan etc.... plus Legal Fees etc.... This is recoverable from Defaulter, IF Recovery Order is in favor of Society.