IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9817 OF 2026

1. Anthony Irineus Carneiro
Age: 74 Adult, Occupation – Retired
Flat No. I/14, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

2. Hayley Maria Misquitta
Age 59, Adult, Occupation – Housewife
Flat No. H/8, Everard Nagar,
Easter Express Highway,
Sion, Mumbai 400 022. ...Petitioners

Versus

1. Francis Colaco
Age : Adult, Occupation – Broker
Flat No. K/6, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

2. Raymond Nogueira,
Age – Adult, Occupation – Business,
Flat No. B/12, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

ARUN RAMCHANDRA SANKPAL

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Date: 2026.09.19 15:14:10 +0530

3. Mathew Sunny
Age : Adult, Occupation-Business,
Flat No. B/2, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

4. Everard Co-operative Housing Society Ltd
A co-operative Housing Society registered

under the provisions of the MCS Act, 1960,
Having its registration No. MUM-2/HSG/
(TC), 9458 of 2006-2007 dated 05.06.2006
and having address at Everard Nagar,
Eastern Express Highway, Sion,
Mumbai – 400 022.

5. The Hon'ble Chairman
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

6. The Hon'ble Secretary
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

7. The Hon'ble Treasurer
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022. …Respondents

WITH

WRIT PETITION NO. 9818 OF 2026

Anthony Irineus Carneiro
Age: Adult, Occupation – Retired
Flat No. I/14, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022. ...Petitioner

Versus

1. Francis Colaco
Age : Adult, Occupation – Broker
Flat No. K/6, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

2. Mathew Sunny
Age : Adult, Occupation-Business,
Flat No. B/2, Everard CHS Ltd,

Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

3. Everard Co-operative Housing Society Ltd
A co-operative Housing Society registered
under the provisions of the MCS Act, 1960,
Having its registration No. MUM-2/HSG/
(TC), 9458 of 2006-2007 dated 05.06.2006
and having address at Everard Nagar,
Eastern Express Highway, Sion,
Mumbai – 400 022.

4. The Hon'ble Chairman
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

5. The Hon'ble Secretary
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

6. The Hon'ble Treasurer
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

7. Aron Pinto
Age: Adult, Occupation- __
Flat No. E/5, Everard CHS Ltd,
Having its address at Everard Nagar,
Eastern Express Highway, Sion,
Mumbai 400 022. …Respondents

WITH

WRIT PETITION NO. 9820 OF 2026

1. Everard Co-operative Housing Society Ltd
Through its Chairman,
Anthony Irineus Carneiro
A co-operative Housing Society registered
under the provisions of the MCS Act, 1960,
Having address at Everard Nagar,

Eastern Express Highway, Sion,
Mumbai – 400 022.

2. The Hon'ble Chairman
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

3. The Hon'ble Secretary
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway, ...Petitioners
Sion, Mumbai – 400 022.

Versus

1. Francis Colaco
Age : Adult, Occupation – Broker
Flat No. K/6, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

2. Mathew Sunny
Age : Adult, Occupation-Business,
Flat No. B/2, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

3. Anthony Irineus Carneiro
Age: Adult, Occupation – Retired
Flat No. I/14, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

4. Aron Pinto
Age: Adult, Occupation- Service,
Flat No. E/5, Everard CHS Ltd,
Having its address at Everard Nagar,
Eastern Express Highway, Sion,
Mumbai 400 022.

5. The Hon'ble Treasurer
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
...Respondents

Sion, Mumbai – 400 022.

WITH

WRIT PETITION NO. 9821 OF 2026

1. Everard Co-operative Housing Society Ltd
Through its Chairman,
Anthony Irineus Carneiro
A co-operative Housing Society registered
under the provisions of the MCS Act, 1960,
Having address at Everard Nagar,
Eastern Express Highway, Sion,
Mumbai – 400 022.

2. The Hon'ble Chairman
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

3. The Hon'ble Secretary
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway, ...Petitioners
Sion, Mumbai – 400 022.

Versus

1. Francis Colaco
Age : Adult, Occupation – Broker
Flat No. K/6, Everard CHS Ltd,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

2. Raymond Nogueira,
Age – Adult, Occupation – Business,
Flat No. B/12, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

3. Mathew Sunny
Age : Adult, Occupation-Business,
Flat No. B/2, Everard CHS Ltd,
Everard Nagar, Eastern Express

Highway, Sion, Mumbai 400 022.

4. Anthony Irineus Carneiro
Age: Adult, Occupation – Retired
Flat No. I/14, Everard CHS Ltd.,
Everard Nagar, Eastern Express
Highway, Sion, Mumbai 400 022.

5. Hayley Maria Misquitta
Age - Adult, Occupation – Housewife
Flat No. H/8, Everard Nagar,
Easter Express Highway,
Sion, Mumbai 400 022. …Respondents

6. The Hon'ble Treasurer
Everard CHS Ltd, having its address at
Everard Nagar, Eastern Express Highway,
Sion, Mumbai – 400 022.

Mr. Saket Mone, with Abhishek Salian, Ayesha Dhorajiwalla, i/b Nyaaya Legal, for the Petitioners in WP/9817/2026 and WP/9818/2026.
Mr. Saket Mone, with Shrey Shah and Mitali Dhoble, i/b Vidhi Partners, for the Petitioners in WP/9820/2026.
Mr. Pravin Samdani, Senior Advocate, with Mayur Khandeparkar, Saket Mone, Shrey Shah and Mitali Dhoble, for the Petitioners in WP/9821/2026.
Mr. Akash Rebello, i/b Dinesh Rane, for Respondent Nos. 1 to 3 in WP/9818/2026 and 9817/2026.
Mr. Vineet Naik, Senior Advocate, i/b Dinesh Rane, for Respondent Nos. 1 to 3 in WP/9820/2026 and WP/9821/2026.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 1st SEPTEMBER 2026
PRONOUNCED ON : 18th SEPTEMBER 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. As common questions of fact and law arise for consideration in a somewhat identical fact-situation, all the Petitions were taken up for hearing together and are decided by this common judgment.

3. By these Petitions under Article 227 of the Constitution of India, the Petitioners take exception to the judgments and orders dated 28th April 2026 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, in Appeal Nos. 14 of 2025 and 15 of 2025, whereby the Appeals preferred by the Respondents-Original Disputants against orders dated 17th February 2025 passed by the learned Judge, Co-operative Court No. III, thereby returning the Dispute No. CC/III/92/2024 and Dispute No. CC/III/449 of 2024 to the Disputants for presentation to the jurisdictional Civil Court, came to be allowed by setting aside the orders passed by the Co-operative Court and resultantly above-numbered disputes stood restored to the file of the Co-operative Court for disposal in accordance with law.

4. The background facts leading to these Petitions can be stated in brief as under:

4.1 Respondent Nos. 1 to 3 in Writ Petition No. 9817 of 2026 are the members of Everard CHS Ltd (R4). Petitioner Nos. 1 and 2 are the members and the Chairman and Secretary, respectively, of Respondent

No.1-society. Respondent No.4 is a society registered under the provisions of Maharashtra Co-operative Societies Act, 1960, ("the MCS Act, 1960"). Respondent No.4 is the owner of piece and parcel of the land situated at CTS No. 628 having its address at Everard Nagar, Eastern Express Highway, Sion, Mumbai-400 022 ("the subject property").

4.2 The society has about 230 members. The affairs of the society are embroiled in differences, disputes and the resultant litigations.

DISPUTE NO. CC/III/449/2024:

4.3 In Dispute No. CC/III/449 of 2024, the Respondent Nos. 1 to 3-Disputants approached the Co-operative Court assailing the legality and validity of the agenda notice dated 22nd August 2022 on multi-fold grounds including that the Secretary of the society (Opponent No.3 therein) had no Authority to convene a Special General Body Meeting ("SGBM") and thus it was void. The said SGBM was not convened in accordance with the mandatory procedure. The purported business carried out in the said meeting was in gross violation of the provisions of the MCS Act 1960 and The Maharashtra Co-operative Societies Rules, 1961 ("MCS Rules, 1961")and the bye-laws of the society and the Resolutions passed therein were illegal and void. It was, *inter alia,* contended that purported Resolution-3 under Agenda Item-4 was

inconsistent or contrary to the provisions of law and was thus liable to be quashed and set aside.

4.4 The Disputants claimed that the dispute was confined to the conduct of the General Meeting and the Management of the society. The Disputants thus sought declaratory and injunctive reliefs in regard to the said agenda notice dated 22nd August 2022 and the Resolution No.3 passed in SGBM dated 28th August 2022.

DISPUTE NO. CC/III/92/2024:

4.5 In Dispute No. CC/III/92/2024, the Respondent Nos. 1 and 3-Disputants approached the Co-operative Court raising the dispute to the effect that, the complaints were filed with the Deputy Registrar, Co-operative Societies regarding the management of the affairs of the Society by its office bearers-Opponent Nos. 2 to 4 therein. The Deputy Registrar had passed an order dated 5th December 2023. A Revision Application was filed before the Divisional Joint Registrar, against the said order.

4.6 In the said Revision Application, on 25th January 2024, the Divisional Joint Registrar had passed an ad-interim order directing the parties to maintain status-quo in terms of prayer clause (b). Yet the managing committee of the Society held a meeting on the following day, i.e., 26th January 2024 and decided to convene a SGBM of the society and, accordingly, a notice was issued on 27th January 2024.

4.7 On 28th January 2024, purportedly in breach of the order passed by the Divisional Joint Registrar, an emergency SGBM of the society was held and a Resolution was passed authorising three members, Opponent Nos. 5 to 7 therein, to take the redevelopment process ahead, to convene SGBM and continue to take decisions without approaching the authorised officer appointed by the Deputy Registrar/Divisional Joint Registrar of the Co-operative Societies. The Disputants alleged, the said Resolution was in gross violation of the provisions of the MCS Act, 1960 and MCS Rules, 1961 and was passed with an oblique motive to circumvent the orders passed by the Divisional Joint Registrar, restraining the society from taking any policy decision.

4.8 The Disputants averred, on 19th February 2024 another agenda notice was published convening the SGBM on 25th February 2024. The said agenda notice was also illegal, null and void.

4.9 The Disputants thus sought the reliefs that the management committee resolution dated 27th January 2024 was illegal and void, SGBM of the society dated 28th January 2024 was illegal and the Resolution passed therein was also null and void, the agenda notice dated 19th February 2024 was bad-in-law, illegal and void, and the consequential injunctive reliefs.

4.10 In Dispute No. CC/III/92/2024 by an order dated 10th April 2024, the learned Judge, Co-operative Court granted interim injunction

and thereby stayed the effect and implementation of the SGBM Resolutions dated 28th January 2024 and restrained the Opponent Nos. 1 to 7 therein from taking steps and/or holding SGBM, pursuant to the agenda notice dated 27th January 2024, directed them to maintain status-quo with immediate effect and also restrained them from taking any steps in pursuance of the aforesaid Resolutions with regard to the affairs of the society, including redevelopment of the society property.

APPLICATIONS FOR REJECTION OF DISPUTES:

4.11 Opponents in the Disputes filed Applications seeking dismissal of the Disputes contending that the Co-operative Court had no jurisdiction to adjudicate the Disputes pertaining to the redevelopment of the society premises, as that did not touch upon the business of the society.

4.12 By orders dated 17th February 2025, the learned Judge, Co-operative Court, was persuaded to return a finding that the dispute between the parties was essentially in respect of the process of redevelopment of the society premises. Since there were precedents which enunciated that redevelopment of the society premises does not touch upon the business of the society, the Disputes were barred by law of precedent, and, consequently, the Co-operative Court cannot entertain such disputes. In the view of the learned Judge, Co-operative Court, the Disputes were required to be returned to the Disputants for

presentation before the competent Civil Court. Accordingly, the Disputes were directed to be returned to the Disputants by invoking the power under Order VII Rule 10 of the Code of Civil Procedure, 1908 ("the Code").

APPEALS BEFORE THE CO-OPERATIVE APPELLATE COURT:

4.13 Being aggrieved, the Disputants preferred Appeals before the Co-operative Appellate Court.

4.14 By the impugned judgments and orders, the leaned Member, Co-operative Appellate Court allowed the Appeals, set aside the order of return of Disputes and restored the Disputes to the file of the Co-operative Court. The learned Member was of the view that the Disputes were between the enumerated persons and primarily in relation to the conduct of the General Meetings of the society and, therefore, the Co-operative Court had exclusive jurisdiction to entertain, try and decide the disputes.

4.15 The learned Judge, Co-operative Court, in the view of the learned Member, did not properly comprehend the real nature of the disputes. Banking heavily upon a decision of a learned Single Judge, in the case of **The Bank of India Staff Panchsheel Co-operative Housing Society Ltd Vs Jitendra Kumar Jani and Ors,**[1] the learned Member held that the disputes were exclusively triable by the Co-operative Court and,

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1 Writ Petition No. 8889 of 2024, decided on 19th December 2025.

therefore, there was no justifiable reason for the return of the Disputes for presentation to the Civil Court.

4.16 Being aggrieved by and dissatisfied with the impugned judgment and order in Appeal No. 14 of 2025, thereby restoring Dispute No. CC/III/449 of 2024, the Society, Chairman and Secretary-Opponent Nos. 1 to 3 in Dispute No. CC/III/419 of 2024, have preferred Writ Petition No. 9821 of 2026 and Anthony Irineus Carneiro and Hayley Maria Misquitta, the Interveners in Appeal No. 14 of 2025, have preferred Writ Petition No. 9817 of 2026.

4.17 Likewise, being aggrieved by the impugned order in Appeal No. 15 of 2025, thereby restoring Dispute No. CC/III/92 of 2024, the Society, Chairman and Secretary—Opponent Nos. 1 to 3 in Dispute No. CC/III/92 of 2024, have preferred Writ Petition No.9820 of 2026 and Anthony Irineus Carneiro—Opponent No. 5 therein, has preferred Writ Petition No. 9818 of 2026.

5. I have heard, Mr. Pravin Samdani, the leaned Senior Advocate for the Petitioners in Writ Petition No. 9821 of 2026, Mr. Saket Mone, the learned Counsel for the Petitioners in Writ Petition Nos. 9817 of 2026, Writ Petition No. 9818 of 2026 and Writ Petition No 9820/2026, Mr. Vineet Naik, the learned Senior Advocate, for Respondent Nos. 1 to 3 in Writ Petition Nos. 9820 of 2026 and 9821 of 2026 and Mr. Akash Rebello, the learned Counsel for Respondent Nos. 1 to 3 in Writ Petition

Nos. 9818 of 2026 and 9817 of 2026. With the assistance of the learned Counsel for the parties, I have also perused the pleading, orders passed by the Courts below and the material on record.

SUBMISSIONS ON BEHALF OF PETITIONERS:

6. The thrust of the submissions on behalf fo the Petitioner was that the learned Member, Co-operative Court, committed a gross error in law in not appreciating the real dispute between the Disputants, on the one part, and the society and the large body of members, on the other part. The genesis of the dispute was in the process of redevelopment initiated by the society. It was submitted that the Appellate Court failed to appreciate that redevelopment does not constitute or relate to the "business of the society" within the meaning of Section 91 of the MCS Act, 1960. Resultantly in view of the express bar contained in Section 91(3) of the MCS Act, 1960, the Co-operative Court lacked jurisdiction to entertain and adjudicate the disputes between the parties.

7. The learned Member, according to the learned Counsel for the Petitioners, read the disputes in a superficial and formalistic manner. The assertion of the Disputants that the dispute was in relation to the General Meetings of the society, was a clear subterfuge which learned Member, Appellate Court failed to decipher.

8. It was urged on behalf of the Petitioners that had the learned Member read the averments in the disputes in a correct perspective, like

the learned Judge, Co-operative Court did do, it would have been clearly realised that the Disputants had resorted to clever drafting to mask the essential dispute between the parties.

9. Even where the apparent dispute pertains to the conduct of the meetings and the Resolutions passed therein, but the underlying dispute is in relation to the redevelopment, only the Civil Court has the jurisdiction as Civil Court can grant reliefs in relation to both the legality and validity of the resolutions passed in the meetings of the society and the disputes emanating from redevelopment process.

10. The agenda notice dated 22nd August 2022 and the Resolutions passed in SGBM dated 28th August 2022, were in respect of the redevelopment of the society. Thus the redevelopment of the society was in essence the substance of the subject matter of the disputes between the parties. It was urged with a degree of vehemence that by a catena of decisions it has been fairly crystallized that, 'redevelopment' of the Society premises does not touch upon the business of the Society and any dispute in relation to the redevelopment is beyond the jurisdictional competence of the Co-operative Court.

11. To lend support to these submission, the learned Counsel for the Petitioners placed reliance on the judgment of the Supreme Court in the case of **Margret Almeida And Ors Vs Bombay Catholic Co-operative Housing Society Limited and Ors,**[2] a Division Bench judgment of this

2 (2012) 5 SCC 642.

Court in the case of **Mohinder Kaur Kochar Vs Mayfair Housing Private Ltd & Ors,**[3] an order of a learned Single Judge of this Court in the case of **Parimal H Solanki In the matter of Bhoumik Co-operative Housing Society Limited and Anr Vs Vina A Sisawala and Ors**[4] and a judgment of a learned Single Judge of this Court in the case of **Komal Arvind Vesavkar & Ors Vs Vesawa Koli Sarvoday Sahakari Society.**[5]

12. The learned Counsel for the Petitioners were in unison on the point that the decision in the case of **The Bank of India Staff Panchsheel Co-operative Housing Society Ltd (Supra),** from which support was drawn by the Appellate Court, did not govern the fact-situation in the instant case. In any event, the import of the said decision in the case of **The Bank of India Staff Panchsheel Co-operative Housing Society Ltd (Supra)** was explained by a learned Single Judge of this Court in the case of **Baliram Totaram Misal & Ors Vs Saujanya Co-operative Housing Society Ltd.**[6]

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

13. Per contra, Mr. Vineet Naik, the learned Senior Advocate and Mr. Akash Rebello, the learned Counsel for Respondent Nos. 1 to 3 in the respective Petitions, would submit that the Appellate Court has correctly

3 Original Side Appeal (L) No. 474 of 2012, decided on 1st August 2012.

4 Original Side Interim Application (L) No. 25993 of 2022 decided on 6th October 2022.

5 Appellate Side Writ Petition No. 8254 of 2022 decided on 15th January 2025.

6 Appellate Side Writ Petition No. 15791 of 2025 decided on 27th August 2026.

exercised the jurisdiction to correct the error which was committed by the Trial Court. Since the learned Judge, Co-operative Court exercised the power under Order VII Rule 10 of the Code, though the Petitioners were seeking the rejection of the Disputes, what was required to be considered was the averments in the Disputes. Taking the Court through the assertions of the of the Disputants in the respective Disputes, the learned Counsel submitted that the twin test of the dispute being between the parties enumerated under Section 91 of the MCS Act, 1960 and the subject matter of the dispute being the conduct of the General Meetings and the management of the society, was clearly satisfied.

14. The learned Counsel laid emphasis on the fact that though the meeting dated 28th August 2022 was convened also to discuss the issue of redevelopment, yet, it did not imply that the subject matter of the dispute was only the redevelopment of the society premises. It was urged that, the question whether the dispute falls within the exclusive jurisdiction of the Co-operative Court is required to be determined in the context of the facts of the given case and no universal rule can be applied.

15. The learned Counsel would urge, in the case at hand, the Disputants were assailing the competence of the persons who convened the meetings, the legality and validity of the agenda notices, the meetings of the General Body held in the breach of the orders passed by

the Joint Registrar, Co-operative Societies, and the Resolutions passed therein. The disputes were thus not confined to redevelopment as such.

16. The decision, in the case of **Baliram Totaram Misal & Ors (Supra),** according to the learned Counsel for the Respondent Nos. 1 to 3, has no application to the facts of the case as in that case two proceedings were instituted, one challenging the Development Agreement before the Civil Court and another challenging the Resolutions on the strength of which such Agreements were executed. In that context, the learned Single Judge held that both the challenges must be by way of a consolidated proceeding before a Civil Court. In contrast, according to the learned Counsel for Respondent Nos. 1 to 3, the decision in the case of **The Bank of India Staff Panchsheel Co-operative Housing Society Ltd (Supra),** squarely governs the facts of the case at hand.

CONSIDERATION:

17. To begin with, at the stage of determining an application for rejection of the Disputes in view of the statutory bar, it is trite, only the averments in the Disputes and the documents annexed thereto are required to be read. The defence of the Defendants is not at all germane to the determination of the question as to whether the Disputes deserve to be rejected or for that matter the Disputes were required to be

returned for presentation to the proper Court, if the Courts finds that it lacked jurisdiction to entertain, try and decide the Disputes.

18. It is equally well-settled the averments in the Disputes are required to be read as a whole and in a meaningful and not formalistic manner. If the Court finds that by resorting to clever drafting an illusion of a cause of action was created or the statutory bar to the maintainability of the Disputes was sought to be circumvented, the Court is empowered to nip in the bud such abortive and fruitless litigation.

NATURE OF THE DISPUTES:

19. In Dispute No. CC/III/449 of 2024, the Disputants have sought reliefs in respect of the agenda notice dated 22nd August 2022 and the Resolution No.3 passed in the SGBM dated 28th August 2022. The notice dated 22nd August 2022 convening the SGBM of the society on 28th August 2022, reveals that amongst other items in the Agenda, the meeting was convened, "to discuss the redevelopment (Agenda Item – 4)". The Resolution No. 3 purportedly passed in the said SGBM, records that the society resolved to reconfirm the Resolutions passed in the SGBM held on 9th June 2019 cancelling the letter of intent and it resolved to authorise the managing committee to explore the options available for redevelopment of the society's premises.

20. In the aforesaid context, the challenge purportedly mounted in Dispute No. CC/III/449 of 2024 deserves to be appreciated. The nature of the challenge is summarised in paragraph 4 of the Dispute as under:

> "4. By this dispute, the Disputants have challenged:
>
> (a) Agenda Notice dt. 22.8.2022, on various grounds, inter alia, that the Opponent No.3 had no authority/jurisdiction to call Special General Body Meeting (SGBM), consequently it is void and non-est in law;
>
> (b) The procedure mandated for calling SGBM has been violated at every stage.
>
> (c) Without offering opportunity to express views in the SGBM, meeting is concluded and purported minutes have been issued, so called procedure adopted is in gross violation of provisions made in the Act, Rules and Bye-laws, and
>
> (d) The purported resolution No.3 under Agenda No. 4 is inconsistent and/or contrary to the provisions of law, for the reasons and in the facts and circumstances mentioned hereinafter, consequently the said purported resolution No.3 dt. 28.8.2022 under Agenda No.4 of Agenda Notice dt. 22.8.2022(for short "impugned resolution") is illegal and liable to be quashed and set aside.
>
> The Disputants state that, by this Dispute Application, the Disputants have restricted their grievances i.e., cause of action and the reliefs to the extent of challenging agenda notice and impugned resolution touching to the conduct of general meeting and management. Consequently, the Dispute fall within the ambit of Sec. 91 of the MCS Act."

21. In paragraphs 5 and 6 of the Dispute, the Disputants have further elaborated the grounds of challenge to the agenda notice and the

Resolution No. 3 passed in the SGBM dated 28th August 2022. Various acts of omission and commission have been attributed which, according to the Disputants, invalidate the notice dated 22nd August 2022 and the Resolution No. 3 passed in SGBM dated 28th August 2022.

22. In Dispute No. CC/III/92/2024, the Disputants, have questioned the legality and validity of the SGBM dated 28th January 2024 and the Resolutions passed in the said meeting. The Disputants have also sought declaration in regard to the Resolution dated 27th January 2024 passed by the managing committee of the society and that the agenda notice dated 19th February 2024 is void and illegal.

23. From the perusal of the averments in the Dispute No. CC/III/92/2024, it becomes clear that the foundation of the challenge to the legality and validity to the aforesaid meeting and the Resolutions passed therein is an order dated 25th January 2024 passed by the Divisional Joint Registrar in Revision Application No. 28 of 2024. Incontrovertibly, on 25th January 2024, the Divisional Joint Registrar passed an interim order in the said Revision in the following terms, as extracted in paragraph 9 of the Dispute No. CC/III/92/2024.

> "9. … … …
>
> "Meanwhile both parties are directed to maintain status quo in respect of prayer clause 'b' of main R.A. till next date of hearing."

The prayer clause 'b' of the Revision Application as reiterated hereinbelow for the sake of brevity:

"That this Hon'ble Authority be pleased to call for papers, records and proceedings pertaining to the proceedings being carried out under Section 89-A of the said Act and grant urgent stay by refraining the Managing Committee of the Respondent No. 2 Society from taking any policy decisions till disposal of the Section 89-A proceedings and various other complaints as filed before the Dy Registrar."

24. On 27th January 2024, the notice convening the emergency SGBM of the society on 28th January 2024 was issued. One of the agenda items, which was to be discussed in the said emergency SGBM was as under:

"

A G E N D A

1. … … …

… … …

5. In view of the non-co-operative members – complainants Mr. Francis Colaco, Mr. Mathew Sunny, Ms Maydinee Date having approached the Divisional Joint Registrar and in a worst case scenario as an outcome of which an Authorised Officer is appointed by the Dy Registrar/Div Jt Registrar then the General Body should authorise 3 members to take the redevelopment process ahead and further authorise the 3 members to convene SPGM without approaching the Managing Committee and/or Authorised Officer if appointed by the Deputy Registrar/Div Jt Registrar of the Co-operative Societies."

25. In the said emergency SGBM held on 28th January 2024, the following resolution was purportedly passed.

> "The General Body hereby authorises vide this resolution following 3 members 1) Mr. Irineus Carneiro, 2) Mr. Shailendra Sawant 3) Aron Pinto take the redevelopment process ahead.
> Further authorises these 3 members to convene a SPGM as may be required and take approval from the general body wide a resolution on any specific agenda as may be required to take decisions pertaining to redevelopment or as may be required without approaching "Authorised Officer" if appointed by the Deputy Registrar/Div Jt Registrar of the Co-operative Societies".

26. The notice dated 19th February 2024, the legality and validity of which was assailed, *inter alia,* contained the following agenda for discussion.

> " Authorise the Managing Committee to be in complete custodianship of the "Bidding Evaluation process", to monitor, and facilitate the entire "Evaluation process" end to end intervening as deemed fit in the best interest of the community and submit a comprehensive "Evaluation Report" to general body for selecting top 3 bidders."

27. The substance of the challenge in the dispute was that the meeting dated 28th January 2024 was convened in breach of the interim order passed by the Divisional Joint Registrar in Revision Application No. 28 of 2024 and the Resolution on agenda Item 5 passed therein was

illegal and void. The second limb of the challenge was that the authority of the General Body was being usurped by appointing a three member committee or by entrusting the functions of the General Body in regard to the redevelopment to the managing committee, in breach of the provisions contained in MCS Act, 1960, especially the directives issued under Section 79A of the Act.

28. It would be contextually relevant to note that, by an interim order dated 10th April 2024, the learned Judge, Co-operative Court granted interim reliefs staying the effect and implementation of the Resolution dated 28th January 2024 and also from taking any steps and/or holding SGBM pursuant to the notice and agenda dated 19th February 2024. The leaned Judge, Co-operative Court found that *prima facie,* the notice was in violation of the provisions of the MCS Act, 1960 and the interim order passed by Divisional Joint Registrar.

29. In the backdrop of the aforesaid facts, the legality and correctness of the impugned orders is required to be appreciated.

30. The legal position as to the interplay between the jurisdiction of the Civil Court and the Co-operative Court under the Act, 1960 is well settled. The jurisdiction of the Civil Court is plenary and omnipresent. Conversely, the jurisdiction of the Co-operative Court is circumscribed by the provisions contained in the Act, 1960; in the context of the controversy at hand, Section 91 under the caption “disputes”. To attract

the provisions contained in Section 91, the twin test of the "type" of the dispute and the "identity" of the parties must be satisfied. In other words, the dispute must be of the "type" described in Sub-section (1) of Section 91, and such dispute must have arisen between the parties who belong to any of the categories specified in Clauses (a) to (e) of Sub-section (1) of that section.

31. In the case of **Margret Almeida And Ors (Supra)**, the Supreme Court, after an analysis of the provisions contained in Section 91, Section 163 and related provisions of the Act, 1960, enunciated in clear and explicit terms that, the disputes which are mandatorily required to be referred to the Co-operative Court should be of the category which are referred to in Section 91(1), and such disputes must have arisen between the parties to dispute who should belong to one or the other categories specified under clauses (a) to (e) of sub-section (1) of Section 91, referred to therein as, "enumerated persons". The Supreme Court exposited that, both the subject matter as well as the parties to the dispute must be those specified under that section. In other words, the Supreme Court clarified, if either of the aforementioned requirement is not satisfied then the dispute cannot be adjudicated by the Co-operative Court. If one of the parties to the dispute is not an enumerated person, the question, whether the subject-matter of the dispute is one which falls exclusively within the jurisdiction of the Co-

operative Court need not be examined. Similarly, if it is found, in a given case that, the subject-matter of the dispute is not covered by Section 91, an inquiry into the question whether the parties to the dispute fall under any of the categories enumerated under Section 91 would become irrelevant.

32. The thrust of the submission on behalf of the Petitioners was that redevelopment does not constitute or touch upon, "the business of the co-operative society". Indeed, this question has been examined in a number of decisions of this court. In the case of **Mohinder Kaur Kochar (Supra)** on which reliance was placed on behalf of the Petitioners, a Division Bench of this Court clarified that dispute regarding development of property of a housing society may touch the business of the society broadly in two ways. Firstly in the kind of cases contemplated under the judgment in the case of **C. F. Marconi Vs Madhav Co-operative Housing Society Ltd,**[7] where the object of the society was to engage in the business of real estate, purchase properties and redevelop the purchased properties. Second type of cases where a housing society undertakes activity of initial construction of the building where the members would reside. Where a co-operative society initially constructs the building for its members, it is not a redevelopment, but the initial development of the property. The initial construction of a building and its redevelopment are different activities. The decision of

7 1985 (2) Bom CR 357.

the society to repair or redevelop the property is totally different from initial development of the building. The dispute arising from such redevelopment, which becomes necessary by passage of time, is not "business" of the society. Such activity cannot be considered as 'touching the business' of the society.

33. In the case of **Maya Developers Vs Rajkumar L Nagda**[8] it was reiterated that redevelopment of its building does not constitute business of the society within the meaning of Section 91 of the MCS Act, 1990.

34. At this stage, it is imperative to note that, as a large number of disputes arose in the matter of management of housing societies, the legislature intervened. Chapter XIII-B containing provisions in relation to "Co-operative Housing Societies", came to be inserted by the Amending Act, 2019. *Inter alia* the definition of 'housing society' was amended.

35. Section 154 B, 1(17) defines the "housing society" with reference to its object as under:

> "(17) "housing society" means a society, the object of which is to provide its Members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its Members common amenities and services and to demolish existing buildings and reconstruct

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8 (2016) 6 Bom CR 629.

> or to construct additional tenements or premises by using potential of the land."

36. With the aforesaid legislative change the reconstruction or redevelopment of a housing society, may now assume the character of a matter which touches the business of the society.

37. In the case of **Parimal H Solanki In the matter of Bhoumik Co-operative Housing Society Limited and Anr (Supra)**, a learned Single Judge of this Court considered the effect of the aforesaid legislative change and held that in view of the provisions contained in Section 154 B-31 incorporating the saving clause as to the existing Rules, Bye-Laws etc, to bring the redevelopment within the fold of the object of the society, the Bye-laws of the Society would necessarily have to be amended to bring them in line with the definition of "housing society" under Section 154-B1(17) of the MCS Act, 1960. The learned Single Judge observed:

> "54. The Amending Act of 2019 only brought above a change in the definition of "Housing Society" which now included redevelopment as one of the objects of the Society. However, Section 154B-31 clearly provided that inter alias, the Bye-Laws applicable to the Housing Society existing on the date of the Amending Act, to continue to be applicable, until expressly repealed, modified or amended. It is an admitted position that the Bye-Laws of the Plaintiff No. 1 Society have not been expressly repealed, modified or amended subsequent to the Amending Act of 2019 and would thus continue to apply to the

> Plaintiff No. 1 Society. This saving of existing Bye-Laws has been expressly brought in the Amending Act of 2019. The existing Bye-Laws of the Plaintiff No. 1 Society does not have "redevelopment" as one of the objects of the Society. Thus, I do not find merit in the contention on behalf of the Defendants that subsequent to the commencement of the Amending Act of 2019, the Bye-Laws are required to be read as if it includes redevelopment as one of the objects of the Plaintiff No. 1-Society. If this contention on behalf of the Defendants is upheld, the said saving provision in the Amending Act of 2019 would be rendered nugatory. In view of the said saving provision, the Bye-Laws of the Society would necessarily have to be amended to bring it in line with the definition of " Housing Society" under Section 154B-1(17)."
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> (emphasis supplied)

38. At this juncture, a reference to the decision in the case of **The Bank of India Staff Panchsheel Co-operative Housing Society Ltd (Supra)** becomes necessary. In the said case, the Petitioner-society had filed an Application under Order VII Rule 11 of the Code for rejection of the Dispute on the ground that the issue of redevelopment does not fall within the jurisdiction of the Co-operative Court. That Application was rejected by the Co-operative Court. It was canvassed before the learned Single Judge that, the issues relating to redevelopment do not fall within the jurisdiction of the Co-operative Court and on that basis alone, the Dispute deserved to be rejected at the threshold.

39. After adverting to the distinction between the concepts of jurisdiction and maintainability, the learned Single Judge observed as under:

> "20. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co-operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Co operative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.
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> 21. The submission based on Section 154B and the saving clause also does not justify rejection of the dispute at the

threshold. The effect of the 2019 amendment, the nature of the enabling provision, and the impact of the saving clause are all matters requiring interpretation in the context of evidence and statutory scheme. They do not create an express bar to institution of a dispute by a member challenging resolutions of the general body. At the highest, they raise issues for adjudication on merits.

22. The argument that the society has executed a Memorandum of Agreed Terms and is bound contractually is equally irrelevant at this stage. Whether the MOAT is valid. Whether it binds dissenting members. Whether it was executed pursuant to valid resolutions. All these are mixed questions of fact and law. They cannot be decided while testing the maintainability of the dispute under Order VII Rule 11.

23. It is also important to note that rejection of a dispute is a drastic power. It non suits a party without trial. Such power must therefore be exercised with circumspection. Unless the bar under law is clear, unambiguous, and apparent from the dispute application itself, rejection is impermissible."

(emphasis supplied)

40. In the case of **Baliram Totaram Misal (Supra)** which constituted the sheet-anchor of the submissions on behalf of the Petitioner, the learned Single Judge of this Court, elaborately considered all the previous judgments and the import thereof.

41. The factual backdrop in which the decision in the case of **Baliram Totaram Misal (Supra)** was rendered deserves to be kept in view. In the said case, the society had commenced redevelopment process in the

year 2016. In the SGBM of the society, a Project Management Consultant and a Developer were selected. Thereafter, the Disputants had approached the Co-operative Court challenging those Resolutions passed in the SGBM. In that context, the learned Single Judge exposited the rationale behind instituting a composite proceeding before the Civil Court by highlighting the futility of independent proceedings challenging Resolutions before the Co-operative Court and the challenge to the Development Agreement before the Civil Court. The observations in paragraphs 27 to 29 read as under:

> "27. As observed above, the judgment of the Apex Court in **Margret Almeida (Supra)** gives a complete answer to the controversy at hand. As held by the Apex Court, even if it is theocratically accepted that it is possible for a member to challenge only the resolution before the Co-operative Court, such challenge becomes meaningless because if the development agreement is not challenged before the Co-operative Court, any declaration made by the Co-operative Court qua the resolution becomes meaningless. The Apex Court has held that the aggrieved person will have to ultimately challenge the conveyance (which in the present case is development agreement and power of attorney). Most importantly, the Apex Court has held that in para-47 that while maintaining a challenge to the development agreement before the Civil Court, the legality of the resolution can always be gone into.
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> 28. Following the ratio of the judgment of the Apex Court in Margret Almeida, in my view, the correct remedy for the Petitioners is to challenge the development agreement and power of attorney before the Civil Court. They have exercised

the remedy of filing a Civil Suit. While determining challenge to the validity of development agreement and power of attorney, the Civil Court can also decide the issue of validity of the resolutions adopted by the Society. This is precisely what is held by this Court in **Komal Arvind Vesavkar (Supra)** after appreciating the law enunciated by the Apex Court in paragraph 47 of the judgment in **Margret Almeida (Supra).**

29. It is also seen that challenging the general body resolutions adopted for execution of development agreement and power of attorney before Co-operative Court and challenging the validity of development agreement and power of attorney before the Civil Court would result in anomalous situation. To illustrate, if the Civil Suit (challenging the development agreement) is decided first and is dismissed and if the challenge to resolution raised in the Dispute before the Co-operative Court remains pending, since Civil Court has not determined the issue of validity of the general body resolutions adopted, the decree would not bind the Co-operative Court. If the Co-operative Court independently determines validity of resolution and holds that the resolutions adopted are bad in law, the same would lead to an incongruous situation where the resolution adopted for execution of the development agreement would be declared illegal whereas the Suit challenging the development agreement is dismissed. The objector (who is the disputant before the Co-operative Court and Plaintiff before the Civil Court) would achieve nothing by seeking theocratical declaration as to the illegality of the Resolution. This is a reason why it is important that both the challenges to the resolution and to the development agreement are adjudicated upon by the same Court."

(emphasis supplied)

42. The aforesaid enunciation of law is thus required to be construed in the backdrop of the contours of the controversy therein.

43. On the aforesaid touchstone readverting to the facts of the case at hand, it is imperative to note that the challenge in the Disputes before the Co-operative Court was primarily in the realm of the legality and validity of the actions of the society and its office bearers to convene the meeting, the conduct of the business in those meeting and the Resolutions passed therein, albeit in respect of redevelopment. However, the matter cannot be looked at from the perspective of the subject matter of the Resolutions only.

44. A broad proposition cannot be laid down that if the impugned Resolution pertains to redevelopment, the Co-operative Court is completely denuded of the jurisdiction to decide the legality and validity of the Resolution, even where the dispute squarely falls in the categories specified in Section 91 of the MCS Act, 1960. The Court is required to steer clear of two extremes. One, drawing an inference of bar to the jurisdiction of the Co-operative Court no sooner the point of controversy revolves around redevelopment, dehors the nature of the challenge and the stage at which the Disputants approach the Co-operative Court. Two, allowing the Disputants to agitate the dispute before the Co-operative Court by cleverly confining the challenge to the Resolution on technical grounds of breach of statutory provisions, Rules,

Bye-laws of the Society, in the matter of convening, holding and passing of Resolution in the meetings of the Society, where redevelopment is at the heart of the controversy and the process of redevelopment has gained momentum and third party rights have intervened.

45. To arrive at a correct resolution, the question of jurisdiction would be required to be determined in the backdrop of the facts of the given case. No straitjacket formula of universal application can be laid down. The mere fact that the Resolutions passed by the society pertain to redevelopment, by itself, cannot be the sole determinative factor.

46. If the facts of the case at hand are appraised, in the light of aforesaid principles, evidently, the first test of the parties being of the enumerated classes is unquestionably fulfilled. Since the challenge, as noted above, is primarily to the legality and validity of the notice and the Resolutions passed in the meetings of the society, on the grounds like lack of competence to convene the meeting, conduct of the meeting in breach of the governing Rules and Bye-laws, holding of the meetings in teeth of the interim orders passed by the Divisional Joint Registrar and passing of Resolution therein with a view to pre-empt and overreach the orders that might be passed by the Authorities under the MCS Act 1960, and not to the merits of the decision of the redevelopment as such, in the considered view of this Court, the fact

that those Resolutions pertain to redevelopment does not per se denude the Co-operative Court of its jurisdictional competence.

47. It is also imperative to note that it was not the case of the Petitioners that the process of redevelopment had gained momentum, in the sense that, the developer was appointed and the Development Agreement has been executed and the reliefs that may be granted by the Co-operative Court would not effectually and completely resolve the disputes presented before the Co-operative Court. On the contrary, as noted above, the Co-operative Court had passed an interim order restraining the society and its office bearers from giving effect to and implementing the impugned Resolutions. Therefore, there was no possibility of the Disputes being rendered infructuous or conflicting orders being passed by the Co-operative Court and the Civil Court.

48. The upshot of the aforesaid consideration is that, the learned Member, Appellate Court was justified in interfering with the orders passed by the Co-operative Court and restoring the Disputes to the file of the Co-operative Court.

49. Resultantly, no interference is warranted in exercise of writ jurisdiction. The Writ Petitions, therefore, deserve to be dismissed. It is, however, clarified that, the Petitioners may workout their remedies in accordance with law qua the interim order passed by the Co-operative

Court, dated 10th April 2024, which also came to be restored by the impugned order in Appeal No. 15 of 2025.

50. Hence, the following order:

: O R D E R :

(i) The Writ Petitions stand dismissed.

(ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]