

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10497 OF 2026
WITH
INTERIM APPLICATION (ST) NO. 24808 OF 2026

Dileep Kumar Pandey and Ors ...Petitioners

Versus

Jag Builds Realty Pvt Ltd & anr. ...Respondents

Mr. Atul Damle, Senior Advocate, a/w Mr. Bhushan Raut, for
the Petitioners.

Mr. Sumit Sonare, a/w Mr. Harshavardhan Jadhav and Mr.
Abhishek Raskar, for Respondent No. 1.

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CORAM: N. J. JAMADAR, J.
DATED: 31st AUGUST, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. This petition under Article 227 of the Constitution of India assails the legality, propriety, and correctness of a judgment and order dated 25th June, 2026, passed by the learned District Judge in Regular Civil Appeal No. 38 of 2026, whereby the appeal preferred by Respondent No. 1 / original Plaintiff against an order passed by the learned Civil Judge on 6th December, 2025, thereby returning the plaint in Regular Civil Suit No. 1419/2024 for presentation to the proper Court, purportedly in the exercise of powers under Order VII Rule 10 of the Code of

Civil Procedure, 1908 ("the Code"), came to be allowed, and Regular Civil Suit No. 1419/2024 came to be restored to its position on the file of the Civil Court, Pune.

3. The Rajyog Heights Co-operative Housing Society Limited (R2) - Defendant No. 5, is a Housing Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"). Defendant No. 5 Society is the owner of the land bearing Plot No. 43/3, CTS No. 42, alongwith a standalone building comprising of 18 residential tenements and a garage situated at Lohegaon, Pune, ("the society premises"). Defendant Nos. 1 to 4, the Petitioners herein, are the members of the Defendant No. 5 Society. Defendant Nos. 1 to 4 are in the occupation of their respective flats described in paragraph Nos. 1A, B, C, and D of the plaint.

4. As the single solitary building was constructed on the society premises in the year 1987-1988 without basic amenities, the Defendant No. 5 Society, in its General Body meeting held on 24th February, 2020, decided to demolish the existing building and construct a new building with modern amenities. After following the requisite process, eventually in a Special General Body meeting held on 10th January, 2021, the

Defendant No. 5 Society resolved to appoint the Plaintiff - Respondent No. 1 to carry out the redevelopment work.

5. In accordance with the terms of the contract between the Plaintiff – Defendant No. 5, majority of Defendant No. 5's members entered into Memorandum of Understanding ("MoU") with the Plaintiff on 22nd February, 2021, incorporating all the terms and conditions of the redevelopment, The Defendant No. 5 Society executed registered Development Agreement and Power of Attorney in favor of the Plaintiff on 21st April, 2023.

6. Despite the society having resolved to entrust the redevelopment to the Plaintiff, and the latter having incurred huge expenses to perform its part of the contract, the Defendant Nos. 1 to 4 were putting hindrances in the redevelopment of the society premises, putting the Plaintiff to grave prejudice and enormous costs. The Defendant Nos. 1 to 4 were raising untenable objections and putting obstacles in the redevelopment work. Hence, the Plaintiff instituted the suit seeking declaration that the decision of the society and the resolutions passed by the society in relation to the redevelopment of the society premises are binding on Defendant Nos. 1 to 4, and to restrain the Defendant Nos. 1 to 4 from

causing interference in the redevelopment of the society premises.

7. The Petitioners - Defendant Nos. 1 to 4 filed an application, purportedly under Order VII Rule 11 of the Code, seeking rejection of the plaint on the ground that the suit was barred by the provisions contained in the Act, 1960, the suit claim was also not properly valued, and, even otherwise, there was no cause of action.

8. By an order dated 6th December, 2025, the learned Civil Judge was persuaded to partly allow the application, opining that, the dispute was exclusively triable by the Co-operative Court constituted under the provisions of the Act, 1960. Thus, the plaint was directed to be returned to the Plaintiff for presentation to the proper Court.

9. Being aggrieved, the Plaintiff filed an appeal before the District Court. By the impugned judgment and order, the learned District Judge allowed the appeal, holding that, the learned Civil Judge was in error in observing that the dispute between the parties was touching the business of the Defendant No. 5 Society. The learned District Judge was of the view that the Plaintiff had no qualms over the resolutions passed by the Defendant No. 5 Society, and the acts done by the Plaintiff in

furtherance of those resolutions cannot be said to be illegal. Thus, by setting aside the order passed by the trial Court, the suit came to be restored to the file of the trial Court.

10. Being aggrieved, Defendant Nos. 1 to 4 have invoked the writ jurisdiction.

11. Mr. Damle, the learned Counsel for the Petitioners, submitted that if the prayers in the suit are considered, it becomes explicitly clear that the Plaintiff was seeking a declaration that the decisions taken, and the resolutions passed, by Defendant No. 5 were binding on Defendant Nos. 1 to 4, who were the members of Defendant No. 5 Society. Resultantly, the core dispute was between the society and its members. The status of the Plaintiff was that of an agent of Defendant No. 5 Society. Therefore, the fact that the Plaintiff did not fall within the categories of the persons specified in clauses (a) to (e) of sub-section (1) of Section 91 of the Act, 1960 was not decisive.

12. A very strong reliance was placed by Mr. Damle on the judgment of a learned Single Judge of this Court in the case of *Ekhnath Namdev Lashkare and others vs. Panchatara Properties & Others*¹. Mr. Damle would urge, the reliance by the learned

¹ 2025 SCC OnLine Bom 4345.

District Judge on the judgment in the case of *Vardhaman Developers Ltd. vs. Borla Co-operative Housing Society* in *Notice of Motion No. 1081 of 2010 in Suit No. 1442 of 2009* was completely misplaced.

13. In opposition to this, Mr. Sunit Sonare, the learned Counsel for Respondent No. 1 - Plaintiff, supported the impugned order. Mr. Sonare assailed the tenability of the petition on the ground that since the learned District Judge passed an order in a Regular Civil Appeal under Order XLI of the Code, a writ petition is not maintainable against such order.

14. Even otherwise, Mr. Sonare would urge, the central issue was that of non-cooperative members of the society putting hindrances in the redevelopment of the society premises. Therefore, only the Civil Court has the jurisdiction to grant the reliefs of declaration and injunction.

15. The objection of Mr. Sonare to the maintainability of the petition need not detain the Court. It is true, the learned District Judge has passed the impugned judgment construing the appeal to be one under the provisions of Order XLI of the Code; yet, the fact remains that the challenge before the learned District Judge was to an order returning the plaint for presentation to the proper Court under the provisions of Order

VII Rule 10 of the Code. Such an order is appealable under the provisions of Order XLIII Rule 1(a) of the Code. The appropriate remedy against an order returning the plaint for presentation to the proper Court is an appeal against such order as provided under Order XLIII of the Code. Therefore, the impugned judgment and order passed by the learned District Judge does not assume the character of a decree and, consequently, not amenable to second appeal under Section 100 of the Code. Writ petition against an order setting aside the order returning the plaint for presentation to the proper Court is the proper remedy.

16. 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 by a catena of decisions. 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.

17. In the case of *Margaret Almeida and Others vs. Bombay Catholic Co-operative Housing Society Limited and Others*², 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 explicated 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

2 (2012) 5 SCC 642.

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.

18. Keeping in view the aforesaid legal position and applying it to the facts of the case, from a meaningful reading of the plaint, it becomes abundantly clear that the action of Defendants Nos. 1 to 4; the purported non-cooperating members, is at the heart of the controversy. Reference to the redevelopment and the decisions taken, and the resolutions passed, by the Defendant No. 5 Society, is in the nature of historical facts. What the Plaintiff, in effect and substance, asserts is that, Defendants Nos. 1 to 4 are bound by the decision of the Defendant No. 5 Society, and they have no right to put obstacles in the development of the society premises and, therefore, Defendants Nos. 1 to 4 be restrained from causing obstruction in the redevelopment process.

19. It is well-recognized that once a society is formed, the individual member loses his independent identity. It is only through the society that the individual member can speak. A useful reference in this context can be made to the decision of

the Supreme Court in the case of *Daman Singh & Others vs. State of Punjab and Others*³, wherein the Supreme Court has expounded the position of a member qua the society after it is formed in the following words:

“11. Once a person becomes a member of a co-operative society he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for qua rights or duties of the society as a body.”

20. The aforesaid decision of the Supreme Court was followed by a Division Bench of this Court in the case of *Girish Mulchand Mehta and another vs. Mahesh s. Mehta and another*⁴.

21. If the averments in the plaint are read as a whole and in a meaningful manner in the light of the aforesaid position in law, it becomes absolutely clear that the twin tests to confer exclusive jurisdiction on the Co-operative Court to adjudicate upon the dispute are not satisfied. Firstly, the dispute is not of the type envisaged by sub-section (1) of Section 91 of the Act, 1960. Secondly, the Plaintiff, does not satisfy the identity criteria prescribed in clauses (a) to (e) of sub-section (1) of Section 91 of the Act, 1960. The mere reference to the decisions

3 (1985) 2 SCC 670.

4 2009 SCC OnLine Bom 1986.

taken, and resolutions passed, by Defendant No. 5 Society in the prayer clause (a) of the plaint does not convert the suit, which, in essence, seeks the enforcement of the rights emanating from the contract executed by Defendant No. 5 Society against minority members, into a dispute of the type covered by sub-section (1) of Section 91 of the Act, 1960.

22. The learned District Judge was justified in holding that the dispute was not touching the business of the society, as redevelopment of the society premises was not the business of the society.

23. There is no substance in the petition. Thus, the petition stands dismissed.

24. In view of dismissal of the petition, IA(ST)/24808/2026 also stands disposed.

[N. J. JAMADAR, J.]