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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7034 OF 2023

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Sujit Vishwanath Dagade & Ors.

... Petitioner

V/s.

Avior Urban Reality LLP & Ors.

... Respondents

Mr. Chaitanya B. Nikte with Ms. Sneha Bhange for the
petitioner.

Mr. Harshad A. Sathe for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2023

P.C.:

- 1.** The petitioners are challenging order passed by the Trial Court rejecting petitioners' application under Order 1 Rule 10 of the Code of Civil Procedure, 1908.
- 2.** Respondent No.1 is the original plaintiff who filed Commercial Suit No.55 of 2022 seeking specific performance of agreement executed by defendant No.1/housing society in his favour. However, injunction is sought against defendant No.1 from creating third party rights or parting with possession or carrying out development activities.
- 3.** The suit is based on registered Memorandum of Understanding (MoU) dated 14 February 2022.

4. In such a suit, the petitioner who is member of housing society filed an application for intervention under Order 1 Rule 10 of the Code of Civil Procedure, 1908. The Trial Court rejected the application holding that remedy of the petitioner is to approach Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960.

5. On perusal of the plaint, it appears that the plaintiff is enforcing right created by MoU executed on 14 February 2022. According to plaintiff, such MoU is signed by defendant No.1/society through its Managing Committee members. The principal relief sought in the suit is against the cooperative society. The petitioner is claiming right as member of the housing society. The Apex Court in **Daman Singh & Ors. v. State of Punjab** reported in AIR 1985 SC 973 held that once a person became member of cooperative society, he must act and speak through the society. This judgment was thereafter followed by the Division Bench of this Court in **Dinesh Kantilal Panchal & Ors. v. State of Maharashtra** reported in 2008 (6) Mah LJ 819. The Division Bench of this Court held that once a person become member, he loses his individuality and he must agitate his rights as member with third persons through society.

6. According to the petitioner, the Managing Committee was authorized to carry out such transaction with the plaintiff. According to the petitioner, the amounts were deposited in personal accounts of the Managing Committee members. If this is the case, remedy of the aggrieved persons is under the provisions of the Maharashtra Cooperative Societies Act, 1960.

7. It is well settled that generally it is for the plaintiff to decide against whom he wants to proceed in a suit. However, this general proposition is subject to exception in the form of Order 1 Rule 10 of the Code of Civil Procedure, 1908 which provides discretion to the Court to add persons necessary for the decision of the suit. The petitioner being an aggrieved member of the cooperative society which is already made party to the suit, such member is not a necessary party to the suit. The Trial court, therefore, has rightly rejected petitioner's application for impleadment. There is no error of jurisdiction.

8. The writ petition is accordingly dismissed. No costs.

(AMIT BORKAR, J.)