

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18346 OF 2024

Viren N. Kapkar, Proprietor of ... Petitioner
M/s. Rahul Industries

V/s.

Radheshyam P. Mishra & Anr. ... Respondents

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Mr. Sumit Sonare i/by Mr. Aditya S. Raktade for the
petitioner.

Mr. Sunil Sali with Mr. Nainesh Amin and Mr. Priyam
Amin i/by N.N. Amin & Co. for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 22, 2025

P.C.:

1. The petitioner assails the Judgment and Award passed by the Cooperative Court, as affirmed by the Cooperative Appellate Court, directing his eviction from the disputed premises. The foundation of the challenge rests on the assertion that respondent No.1, though claiming to be the owner, had placed the petitioner in possession under an unregistered Memorandum of Understanding. On that footing, respondent No.1 instituted a dispute for recovery of possession by asserting title. The petitioner seeks to dislodge the concurrent findings by questioning both the forum and the basis of the claim.

2. The defence of the petitioner proceeds on two planks. First, that by virtue of the MoU he himself became the owner of the premises. Second, that the dispute was not maintainable before the Cooperative Court and could be tried only by a Civil Court. To reinforce possession, the petitioner also invoked protection under Section 53A of the Transfer of Property Act, 1882. These pleas require careful scrutiny in the light of the admitted facts and the statutory scheme.

3. The Cooperative Court framed issues, including an issue on maintainability. On evidence, it recorded a clear finding that respondent No.1 is the owner of the premises. The petitioner's claim of ownership rests solely on the MoU. The document is admittedly unregistered. Law is settled. An unregistered instrument of this nature does not convey title. It cannot create ownership. At best, it may explain the nature of entry into possession. It cannot displace the title of the true owner. The petitioner, therefore, could not defend his possession on a plea of ownership.

4. The objection to maintainability also lacks substance. The record shows that both parties are members of the same industrial cooperative society. The society exists to acquire land, develop it, and allot plots to its members, and thereafter to manage and maintain such property in accordance with cooperative principles. The dispute seeks recovery of possession of a plot allotted through the society. It arises between members. It directly concerns rights flowing from membership and allotment. Such a dispute plainly touches the business of the society. Section 91 of the Maharashtra

Cooperative Societies Act confers jurisdiction on the Cooperative Court in such matters. The Courts below were right in holding that the dispute was maintainable before that forum.

5. The plea of protection under Section 53A of the Transfer of Property Act was sought to be urged at the stage of arguments. A perusal of the written statement shows no specific plea invoking that provision. No foundational facts were pleaded. No issue was sought on that basis. The Courts below, therefore, did not frame any issue on Section 53A.

6. Protection under Section 53A is not automatic. It depends on proof of several facts, including the nature of the contract, readiness and willingness, and acts in furtherance of the contract. It is a mixed question of law and fact. In the absence of a clear and specific plea, the Courts below committed no error in declining to consider it. A party cannot seek to build a defence without laying its factual foundation in pleadings.

7. The legal position that emerges is clear. Respondent No.1 continues to be the owner of the premises. The petitioner entered into possession under an unregistered MoU. His status never rose above that of a licensee or permissive occupant. Once the Cooperative Court decreed eviction, the authority to remain in possession came to an end. The petitioner has no independent right to continue. The concurrent findings of the Courts below are based on law and evidence. They call for no interference. The decree for eviction is, therefore, rightly passed and rightly confirmed.

8. There is no merit in the writ petition. The writ petition accordingly stands dismissed. No costs.

(AMIT BORKAR, J.)