

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8383 OF 2025

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Laxman J Tandel & Ors. ... Petitioners
V/s.
Tumaju Srinivas Chary & Ors. ... Respondents

Mr. Hemant Ghadigaonkar, for the Petitioners.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 10, 2025

PC.:

1. The petitioner has filed the present petition to challenge the orders passed by the authorities below. *Respondent No.1, the member of the society* had filed a dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960 for recovery of the amount which, according to *the disputant*, was misappropriated by the petitioner. The Cooperative Court and the Appellate Court have rejected the said dispute.

2. The learned advocate for the petitioner argues that Sections 83 and 88 of the MCS Act create a legal bar as contemplated under Order VII Rule 11 clause (d) of the Code of Civil Procedure, 1908. It is submitted that the society cannot maintain a dispute under Section 91 for recovery of the alleged misappropriated amount when proceedings under Sections 83 and 88 are available. Accordingly, the petitioner contends that the filing of the dispute itself is not permissible in law.

3. After examining the dispute filed before the Cooperative Court, it becomes clear that the society has asked for two specific reliefs. First, a declaration that the opponents, during their tenure as members of the Managing Committee, misappropriated society funds. Second, a direction that the opponents be ordered to refund an amount of eight lakh rupees to the society. The society has also asked that, because of the alleged misappropriation, the opponents be restrained from contesting any future elections of the society.

4. Sections 83 and 88 of the Maharashtra Cooperative Societies Act must be read in their correct context. Section 83 empowers the Registrar to hold a preliminary inquiry into the working of the society. This inquiry is only for the purpose of gathering material. If the inquiry reveals material indicating misappropriation or loss caused to the society, the Registrar may consider further action.

5. If the inquiry under Section 83 shows that an officer is responsible for misappropriation or loss, then proceedings under Section 88 may be initiated. Section 88 enables the Registrar to fix personal liability of officers of the society. For this purpose, the Registrar may appoint an authorised officer and conduct the proceedings in accordance with the rules framed under Section 72 of the Act. These provisions are enabling in nature. They give the Registrar power to determine liability of officers. They do not take away any right of the society to independently recover amounts through a dispute under Section 91.

6. There is no material to show that Sections 83 or 88 create any legal bar of the nature contemplated under Order VII Rule 11

clause (d) of the Code of Civil Procedure. The law is clear that rejection of a plaint under Order VII Rule 11 clause (d) is possible only when there is an express statutory bar. The bar must be clear and absolute. A mere availability of another remedy does not bar jurisdiction. Section 163 of the Act is the provision that speaks of jurisdiction being barred. Even Section 163 does not prevent filing of a dispute under Section 91 in matters arising out of the business of the society. The Act nowhere states that where Section 83 or Section 88 is invoked, Section 91 cannot be used for recovery.

7. The Courts below have correctly held that the procedure under Sections 83 and 88 is independent. *It does not take away the right of the Disputant by filing a dispute under Section 91.* The petitioner's argument is not supported by the Act or any credible evidence. There is no merit in the petition. The petition is dismissed.

(AMIT BORKAR, J.)

Note: This order is modified as per the order dated 21 November 2025.