

Shabnoor

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

WRIT PETITION NO.8635 OF 2025

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Asha Abasaheb More

... Petitioner

V/s.

Mulund Mayur Sahakari

Gruhnirman Sanstha Maryadit & Anr.

... Respondents

Mr. Dishan Kukreja a/w Ms. Harshita Kotian & Hrithika Shetty i/b MGS Legal, for the Petitioner.

Mr. Nitin S. Tare a/w Mr. Sushant N. Tare, for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2025

P.C.:

1. The present writ petition arises from the rejection of a dispute instituted by the petitioner seeking a declaration of his right to a flat in the society building. The Cooperative Court partly accepted the petitioner's case. It recorded a clear finding that the petitioner is a member of the society. It also held that the petitioner had paid an amount of ₹1,60,000 to the society. Yet, the dispute was dismissed. The sole reason given was that all flats in the society had already been sold, and no flat remained available for allotment to the petitioner.

2. The petitioner, feeling aggrieved, carried the matter in appeal before the Cooperative Appellate Court. During the pendency of the appeal, the petitioner sought amendment of the

pleadings. He prayed that, in the alternative, compensation be granted if the Court were to hold that no flat could be allotted to him despite his admitted status as a member. The Appellate Court rejected the amendment application. It thereafter dismissed the appeal without recording any finding on the petitioner's status as a member of the society. This approach has given rise to the present challenge.

3. In my view, the record left little room for doubt on certain basic facts. The Cooperative Court recorded clear findings. The witnesses of the society admitted that the petitioner was treated as a member. They also admitted that the petitioner had paid a sum of ₹1,60,000 to the society. These facts were not assumed. Once such findings were on record, the Cooperative Appellate Court could not avoid the core issue. It was duty bound to decide whether the petitioner was, in law, a member of the society. If the answer was in the affirmative, the matter could not end there. The Appellate Court was then required to examine what relief could be granted to the petitioner. This was necessary because the evidence showed that all flats had already been allotted or sold. In such a situation, the Court had to examine equitable reliefs that flow from a proved membership and proved payment.

4. Clear guidance on this aspect is available from the judgment of this Court in *Siddharth Holding Pvt. Ltd. and another versus Saidale Cooperative Housing Society Ltd. and others*, 2003 SCC OnLine Bom 311. That decision recognizes that when a person's entitlement is established on evidence, the Court must mould relief to do real justice. Relief cannot be refused only because the

original form of relief has become impracticable due to subsequent events. Tested on this principle, the order, and award passed by the Cooperative Appellate Court cannot stand. The Appellate Court failed to apply settled law to admitted facts. The impugned order, therefore, suffers from a serious legal infirmity and deserves to be set aside.

5. The matter must, therefore, go back to the Cooperative Appellate Court for a proper decision. On remand, the Appellate Court shall first decide, on the basis of existing evidence, whether the petitioner is a member of the housing society. It shall then consider whether the alternative amendment sought by the petitioner deserves to be allowed. If both these questions are answered in favour of the petitioner, the Appellate Court shall determine the appropriate relief. While doing so, it shall be guided by the principles laid down in *Siddharth Holding*. The exercise shall be confined to reliefs supported by the evidence already on record and by settled legal principles.

6. The parties shall appear before the Cooperative Appellate Court on **5 January 2026 at 10:30 a.m.**

7. The Cooperative Appellate Court shall decide the appeal within a period of three months from the date of appearance of the parties.

8. The petition stands disposed of.

9. There shall be no order as to costs.

(AMIT BORKAR, J.)