

AGK

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

**WRIT PETITION NO.10593 OF 2025**

Ajay Shantilal Porwal & Ors. ... Petitioners  
**V/s.**  
Gangadham A Cooperative  
Society Limited & Ors. ... Respondents

**WITH  
WRIT PETITION NO.16794 OF 2025**

Deepak Pravin Shanghavi ... Petitioners  
**V/s.**  
Ajay Shantilal Porwal & Ors. ... Respondents

Mr. R.D. Soni with Mr. VR. Kasle i/by Ram & Co. for  
the petitioners in WP/10593/2025.

Mr. Tukaram Shendge for respondent No.2 to 11.

Mr. Kishor Patil with Mr. Mayuresh Ingale i/by Mr.  
Abhishek Salian for respondent Nos.12 and 13 in  
WP/10593/2025.

Mr. Saket More with Mr. Mayuresh Ingale, Ms. Aashka  
Vora i/by Mr. Abhishek Salian for the petitioner in  
WP/16794/2025 & for respondent Nos.14 in  
WP/10593/2025.

Mr. Ramdas Hake Patil for respondent No.28.

**CORAM : AMIT BORKAR, J.**

**DATED : DECEMBER 11, 2025**

**P.C.:**

1. The petitioners have filed this writ petition to challenge the Judgment and Order dated 10 February 2025 passed by the Cooperative Appellate Court. That order confirmed the Judgment

and Order dated 25 April 2024 of the Cooperative Court No. 2, Pune in Dispute No. 134 of 2022. The Cooperative Court had dismissed the dispute by invoking Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. The petitioners state that they are members of respondent No. 1 cooperative housing society. On 4 October 2022, they instituted Dispute No. 134 of 2022 seeking several declarations. They sought declaration that resolutions passed in the Annual General Meeting and Special General Meeting were illegal. They sought injunction restraining the opponents from acting upon those resolutions. They also sought declaration that the deed of conveyance executed on the strength of the said resolutions was null, void, and not binding. They further sought perpetual injunction restraining opponent Nos. 13 to 28 from creating third party rights. They also sought injunction restraining the opponents from carrying out construction.

3. Respondent Nos. 13, 15 and 28 filed an application dated 3 November 2022 under Order VII Rule 11 of the CPC seeking dismissal of the dispute. The petitioners filed a reply opposing the application. After hearing both sides, the Cooperative Court allowed the applications below Exhibit 32 and 44 on 25 April 2024 and rejected Dispute No. 134 of 2022.

4. The petitioners challenged the order of the Cooperative Court by filing Appeal No. 44 of 2024 before the Cooperative Appellate Court. The Appellate Court dismissed the appeal by the impugned Judgment and Order dated 10 February 2025. Hence

the petitioners have approached this Court in writ jurisdiction.

5. Mr. Soni, learned Advocate for the petitioners, submitted that the Courts below failed to distinguish between objections to maintainability and objections to jurisdiction. He submitted that the respondents raised an objection that the petitioners, being nominal members, lost their status after introduction of Chapter VIII in the Maharashtra Cooperative Societies Act, 1960. According to the respondents, such nominal members could not invoke Section 91 and therefore the dispute could not be entertained. He submitted that this objection pertains to jurisdiction. The respondents invoked clauses (a) and (d) of Order VII Rule 11, CPC. He submitted that the petitioners had pleaded all necessary averments to challenge the general body resolutions. He submitted that the respondents could not show which statutory provision specifically bars filing of such dispute. He submitted that clause (d) of Order VII Rule 11 requires a clear statutory bar.

6. He submitted that lack of jurisdiction of the Cooperative Court does not amount to a statutory bar within the meaning of clause (d) of Order VII Rule 11. He submitted that the Cooperative Court held that the parties were not covered under Section 91. The Cooperative Appellate Court corrected this error and held that the parties fall within Section 91. It only held that the subject matter of the dispute does not fall under Section 91. He submitted that such finding does not amount to a statutory bar. He submitted that the fact that resolutions were acted upon and merged into the reliefs under prayer clauses (d), (e), and (f) also does not constitute a bar under clause (d) of Order VII Rule 11.

7. He submitted that reliance on the judgment of the Supreme Court in *Margret Almenda and others vs. Bombay Catholic Coop. Housing Society Ltd. and others*, (2012) 5 SCC 642 was misplaced. He submitted that the said judgment dealt with jurisdiction. He submitted that the Cooperative Court, in paragraph 34 of its order, held that the dispute was hit by Sections 91, 92, and 163(3) of the MCS Act. He submitted that except Section 163, none of these provisions create a statutory bar. He submitted that Section 163 only bars civil suit. Hence, according to him, the impugned orders deserve to be quashed.

8. In reply, Mr. Kishore Patil, learned Advocate for respondent Nos. 12 and 13, submitted that the dispute must be read as a whole. He submitted that the petitioners described their capacity as nominal members in several paragraphs. Only in paragraph 13 they termed themselves as members. Hence they must be treated as nominal members. He submitted that after introduction of Chapter VIII in the MCS Act, the law does not recognise nominal members as members. Therefore, they cannot maintain the dispute. He further submitted that Section 31 of the Specific Relief Act bars the dispute because the petitioners seek relief affecting a conveyance executed in favour of the respondents. Such relief cannot be granted by the Cooperative Court. He submitted that the Courts below have rightly rejected the dispute.

9. Mr. Mone, learned Advocate for respondent No. 14, relied upon the judgment of this Court in Writ Petition No. 8254 of 2022. He submitted that the coordinate Bench dismissed a similar dispute arising from similar facts. He submitted that the judgment

operates as precedent. He also relied on paragraphs 46 and 47 of the judgment in *Margret Almenda* to submit that Section 31 of the Specific Relief Act creates a specific bar. He prayed that the writ petition be dismissed.

10. The narrow legal question is, did the courts below rightly reject the disputants' plaint under Order VII Rule 11 CPC on the ground that the claim is barred by statute?

**Difference between jurisdiction and a specific bar created by a statute:**

11. I begin with the basic difference between jurisdiction and a specific bar created by a statute. Jurisdiction means the legal power given to a court to hear a dispute and decide it. This power does not come from the court itself. It comes from the statute that creates the court. If a court acts without jurisdiction, its decision has no legal value. Maintainability, on the other hand, deals with whether a case can be heard in the manner it is presented. A court may have the power to hear a particular category of disputes, yet a case may still be dismissed because it is filed late, or because the person filing has no right to file it, or because some specific law says that such a case cannot be filed in that form.

12. A statutory bar for the purpose of Order VII Rule 11(d) of the Code of Civil Procedure is not the same as lack of jurisdiction. For a plaint to be rejected under that rule, the law must clearly say that such a dispute cannot be brought before the court at all. The bar must be obvious from the plaint itself. The court must see from the statements in the plaint that the law stops it from going ahead.

If the bar is not clear or if there is any doubt that requires evidence, the plaint cannot be rejected. In *Deepak Manaklal Katariay Vs Ahsok Motilal Katariya and Others 2024 SCC OnLine Bom 3700*, this Court has earlier explained this distinction in a judgment where the Trial Court had mixed up these two concepts and reached the wrong conclusion

**13.** The Court's below treated jurisdiction and maintainability as if they meant the same thing. The term "jurisdiction" refers to the authority of a court to deal with the matter. It means the power to receive the case, examine the facts, apply the law, and make a binding decision. Jurisdiction can be of three types. First, subject matter jurisdiction which deals with the type of cases the court can hear. Second, territorial jurisdiction which decides the geographical area within which the court can act. Third, pecuniary jurisdiction which sets the monetary value of the cases the court can take up.

**14.** Jurisdiction always comes from the statute. A court either has that power or it does not. If it does not, then no amount of consent or agreement can give that court the authority. Even if a court with jurisdiction decides wrongly, the decision is still valid because jurisdiction concerns only the power to decide, not the correctness of the decision.

**15.** Maintainability deals with something different. It looks at whether the case is properly filed before the court. A court may have the power to hear a particular type of dispute but may still say that the case is not maintainable because the party has not

followed the correct procedure, or because the dispute is filed after the time limit, or because the person filing the case has no right to raise that particular grievance, or because a specific law has prohibited that type of case. These objections do not touch the court's power. They only deal with whether the particular case, in the way it is presented, can go forward.

**16.** There may be a statutory bar. For instance, a law may say that once a matter is decided, it cannot be filed again. That is the principle of *res judicata*. There may be a bar of limitation. A person may file the case after the time allowed by law. There may be lack of *locus standi*. That means the person filing the case is not the right person to bring the grievance. These situations lead to dismissal of the case, but they do not mean that the court lacked jurisdiction.

**17.** It is, therefore, necessary to keep the two concepts separate. Jurisdiction depends on the statute that creates the court and gives it power. Maintainability depends on whether the party filing the case has complied with all legal requirements. When a court lacks jurisdiction, everything that follows is invalid. When a case is not maintainable, the dismissal only affects that particular case; it does not take away the court's general power to hear other such cases.

**18.** Thus, jurisdiction concerns the court's authority. Maintainability concerns whether the dispute, as filed, meets the legal requirements. This distinction is important because Order VII Rule 11(d) applies only when the plaint itself shows that a statute clearly bars the remedy. It does not apply where the court has

jurisdiction but there may be procedural or factual objections requiring evidence.

**Scope of Order VII Rule 11(d):**

**19.** Order VII Rule 11(d) is not meant to be used freely. It is a very limited power. It allows a court to reject a plaint only when the plaint itself, on a plain reading, shows that some law directly prohibits the court from hearing the matter. It must appear straight from the statements written in the plaint. If the court has to look beyond the plaint, or if it has to examine documents, or if it has to weigh arguments on facts, then the case is not fit for rejection at the threshold.

**20.** The law requires the bar to be clear and unmistakable. If the bar is not clear from the plaint, the court must not reject it. The court cannot decide disputed facts under Order VII Rule 11. For example, if the respondents say the plaintiffs are only nominal members and the plaintiffs say they are full members, this is a disputed fact. This cannot be decided without evidence. Such contested issues do not amount to a statutory bar. They may affect the outcome at a later stage, but they do not allow the court to reject the plaint at the beginning.

**21.** Similarly, if a question involves interpretation of legal provisions along with factual examination, it becomes a mixed question of law and fact. Mixed questions must be decided after hearing evidence and arguments, not by using the narrow power of rejecting the plaint.



22. Order VII Rule 11(d) applies only when a statute clearly says that such a dispute cannot be filed at all. The statutory language must leave no room for doubt. If the law is not explicit, or if two interpretations are possible, the court cannot reject the plaint. Instead, the court must allow the matter to proceed to trial. Only after examining evidence and arguments can the court determine whether the suit is maintainable or whether any statutory bar actually applies.

23. Therefore, unless the plaint itself shows a direct legal bar, the court must permit the case to go forward and decide it on merits.

**Plea of lack of membership:**

24. The petitioners have, in their pleadings, stated in one place that they are members of the society. In other places, they have referred to themselves as nominal members. This is an inconsistency. It affects how strongly the pleadings appear, because a party is expected to state its status clearly. But such inconsistency does not mean that the case must be rejected at the very beginning. The law allows a party to plead alternative or even inconsistent facts, especially when their exact legal status is in dispute. The purpose of a trial is to bring clarity to such issues.

25. For rejection under Order VII Rule 11(d), the court has to see whether the plaint itself shows that a clear law prohibits the suit. The question here is whether the Maharashtra Cooperative Societies Act contains any provision which expressly states that a nominal member cannot file a dispute under Section 91. The real

question is a factual one. Are the petitioners ordinary members or nominal members. If nominal, does the law, after the amendment to Chapter VIII, still give them standing to raise grievances about society affairs. These questions require evidence. They need examination of membership records, bye-laws, amendments made by the legislature, and the conduct of the society. These issues cannot be resolved merely by reading the plaint. They require a proper trial.

26. Such questions, which depend on proof, are called triable issues. They must be decided after both sides present their evidence. Because these issues require trial, they cannot form the basis for rejecting the plaint under Order VII Rule 11(d). That rule applies only when the bar is clear from the plaint itself, not when the bar depends on factual investigation.

**Whether Section 31 of the Specific Relief Act operates as a bar:**

27. Section 31 of the Specific Relief Act allows a court to cancel a written document when that document is either void or voidable. This provision is meant to give a remedy to a person who says that a document affecting his rights is illegal. It is a remedial section. It tells a court what type of relief it may grant. It does not tell which court must grant that relief. It also does not say that any other statutory forum loses its power to decide such questions.

28. The Maharashtra Cooperative Societies Act creates its own special forum for disputes concerning cooperative societies. That forum is the Cooperative Court. Section 91 of the Act gives power to the Cooperative Court to decide disputes that relate to the

working of the society, including disputes about how general body meetings were conducted, how resolutions were passed, and whether those resolutions are legal or illegal. When a dispute directly challenges the legality of resolutions passed in a general body meeting, the Cooperative Court is the correct forum to decide the matter.

**29.** If the petitioners say that the deed of conveyance executed by the society is illegal because the resolutions that approved that conveyance are themselves illegal, then the Cooperative Court must examine those resolutions. If the resolutions are found to be void, then the Cooperative Court can also consider the legal effect on the conveyance executed pursuant to those resolutions. The conveyance may fall automatically if the foundation on which it stands is knocked down. If the Cooperative Court is prevented from looking at the consequences of its own findings, then the very purpose of creating a special forum under Section 91 is defeated.

**30.** If the Cooperative Court cannot consider the effect of illegal resolutions on the conveyance because Section 31 exists, then Section 91 loses its purpose. The Cooperative Court becomes powerless to grant real and complete relief. That is not the intention of the statute. The correct approach is to allow the Cooperative Court to hear evidence, understand the facts, and then decide if the conveyance is void or voidable because the resolutions that led to it were illegal. Only after examining facts can the Cooperative Court decide whether some part of the relief falls outside its powers and must be pursued in a civil court.

31. But the mere existence of Section 31 does not automatically bar the Cooperative Court from hearing such a dispute. It does not appear from the face of the plaint that any law prohibits the Cooperative Court from deciding the consequences of alleged illegal resolutions. Therefore, Section 31 cannot be treated as a clear statutory bar under Order VII Rule 11(d). The plaint must be tried, the facts must be examined, and only then can the Cooperative Court decide which part of the relief it may grant and which part, if any, must be sought elsewhere.

**Applicability of judgments relied:**

32. The Supreme Court judgment in *Margret Almeida* is important because it considers the scheme of the Maharashtra Cooperative Societies Act and clarifies when a dispute can be entertained under Section 91. The judgment shows that the Cooperative Court can decide certain disputes but cannot decide disputes involving persons who do not fall within the classes mentioned in Section 91(1). That issue goes to jurisdiction. The Supreme Court held that if the parties to the dispute are not those covered by Section 91, then the Cooperative Court has no jurisdiction. Jurisdiction under Section 91 must be determined from the statute. It cannot be presumed or denied based on disputed facts. In *Margret Almeida*, the Court relied on admitted facts which were sufficient to show that the Cooperative Court had no jurisdiction because the disputes involved purchasers who had acquired rights independent of the society. That was not a case of rejecting a plaint under Order VII Rule 11(d). The bar was not dependent on evidence.

**33.** In *Komal Arvind Vesavkar*, the decision turns purely on the facts of that particular case. The Court did not lay down any general principle of law. The judgment does not interpret any statutory provision in a way that creates binding precedent. It is therefore not a judgment that can guide this Court on a question of law. It has no precedential value for the present case. In law, a judgment has precedential value only when it lays down a legal proposition after examining a statutory provision or a principle of law. A judgment that merely applies settled principles to the facts before it does not become a precedent. Unless a judgment declares law or explains a statutory provision, it cannot bind courts in future cases.

**34.** I quash the impugned Judgment and Order dated 10 February 2025 passed by the Cooperative Appellate Court confirming the Judgment and Order dated 25 April 2024 of the Cooperative Court No. 2, Pune in Dispute No. 134 of 2022.. I restore Dispute No.134 of 2022 to the file of Cooperative Court No.2, Pune. The Cooperative Court shall proceed to hear the dispute on merits. The Cooperative Court shall frame issues including issue of jurisdiction.

**35.** No order as to costs.

**(AMIT BORKAR, J.)**