



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.19/2021

Late Shri Ramchandra Devrao Jugade (Dead),
through his legal heirs:-

- (i) Deepak Ramchandra Jugade,
65 Yrs.
- (ii) Kiran Ramchandra Jugade,
62 Yrs.
- (iii) Sunil Ramchandra Jugade,
60 Yrs.

All R/o Plot No.111, Dattatraya
Nagar, "Sakkardara Street Scheme",
Sakkardara, Nagpur 440 024

.....(Original OP No.3)
..... Applicants

- Versus -

1. Late Krishnarao S/o Gangaram Kalbande
(Dead), through his legal heir Devanand
Kalbande, R/o At and Post, Patansawangi,
Tah. Saoner, Distt. Nagpur - 441 113.
.....(Original Disputant)
2. The President/Secretary, Shivaji
Gruhnirman Sahakari Sanstha Ltd.,
Dattatraya Nagar, Sakkardara,
Nagpur 440 024.
.....(Original OP No.1)
3. Shri Bapurao Vishwanath Dhakulkar (Dead)
through legal heirs(Original OP No.2)
 - (i) Mr. Shrikant Bapurao Dhakulkar,
 - ii) Mr. Dyanesh Bapurao Dhakulkar,

iii) Mr. Prakash Bapurao Dhakulkar

All R/o Plot No.79, Dattatraya Nagar,
Nagpur 440 024. ... Non-applicants

Mr. T.D. Mandlekar, Advocate for the applicants.
Mr. R.S. Mohod, Advocate for non-applicant No.1.
Mr. K.S. Totade, Advocate for non-applicant No.2.
Mr. R.S. Kurekar, Advocate for non-applicant Nos.3 (i to iii).

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT: 10.07.2025.
DATE OF PRONOUNCING THE JUDGMENT: 12.08.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
by consent of learned Advocates for the parties.

2. The applicants who are the legal heirs of original
opponent No.3 have filed this application challenging the order
passed by the Cooperative Court on 19.10.2020 rejecting the
application filed by the applicants under Order VII Rule 11 (a)
and (d) of the Code of Civil Procedure read with Section 92(1) of
the Maharashtra Cooperative Societies Act, 1960.

3. The non-applicants have filed the dispute before the Cooperative Court for declaration that the Resolution No.4 passed by the Society cancelling the allotment of suit plot No.111 is illegal, arbitrary and bad in law. The declaration is also sought that the sale deed dated 15.11.1979 executed in favour of opponent No.3 is not binding on them under the provisions of Maharashtra Cooperative Societies Act.

4. The brief facts of the dispute filed by the original disputant i.e. non-applicant No.1 herein are as under:-

Opponent No.3 was the member of society. Plot No.111 was allotted to the disputant on 13.5.1967 and the sale deed was executed in his favour. However, on 2.9.1967, State Government vide its notification has given control to Nagpur Improvement Trust over the entire area in which Plot No.111 was situated. Therefore, on 16.7.1973 opponent No.1 society handed over the possession of entire land to N.I.T. The notices were sent to all the members for purchasing plots of Kh. No.20, Hiwari Layout, Nagpur but disputant failed to encash this opportunity.

On 15.11.1979 opponent No.1 society executed the sale deed of disputed plot i.e. plot No.111 in favour of opponent No.3 and by passing the Resolution, opponent No.1 society, cancelled the plots allotted to members who have failed to make payment of Rs.1,000/- and no due towards the society. On 27.5.1985, N.I.T. made lease of plot No.111 in favour of opponent No.1-society. On 17.9.1985 opponent No.1- society made registered relinquishment deed in favour of opponent No.3. On 5.12.1986, N.I.T. made a mutation entry in the name of opponent No.3.

5. The opponent in said dispute i.e. the applicants in this application have filed the application stating that said dispute is not at all maintainable, there is no any cause of action to file the present suit, it is barred by limitation as prescribed under Section 92(1) of the Maharashtra Cooperative Societies Act, 1960 and also barred by Limitation Act.

6. According to the applicants, disputant has given the bid offer to purchase plot No.42 and has given the undertaking that he has not received any plot from society. Bid offer of the disputant was accepted but he failed to make payment within stipulated time and, therefore, his claim has not survived. These facts are suppressed by the disputant before the Court. The dispute has been filed on the erroneous assumptions made by the disputant. The disputant is challenging the Resolution passed on 27.7.1980 which is barred by law of limitation. Hence prayed to reject the plaint under Order VII Rule 11 of the C.P.C.

7. The non-applicant resisted the application filed by the applicants stating that the issue on the point of limitation is already framed. Cause of action is a bundle of facts and, therefore, it cannot be adjudicated upon without examining the parties. Hence prayed to reject the application.

8. Heard the learned Advocates for the parties and perused the record.

9. It is the settled law that while deciding the application under Order VII Rule 11 of the C.P.C., only averments stated in the plaint can be looked into. The defence of the non-applicant cannot be considered at the stage of considering the application under Order VII Rule 11 of the C.P.C. On perusal of plaint, it appears that contention regarding bid was accepted for purchase of plot No.42 and an undertaking was given by the disputant that he has not purchased any plot in said society is not mentioned in plaint. Said defence cannot be considered at the stage of deciding application under Order VII Rule 11 of the C.P.C.

10. It is the case of disputant that he has purchased a vacant plot No.111 for construction of residential house from opponent No.1 society on 13.5.1967, sale deed was also executed and the possession was handed over to the disputant. The

disputant was waiting for the letter of lease deed from N.I.T. for confirming the regularization of the said plot and was also waiting for demand of development cost for the said plot. In the month of October 2009 when the power of attorney holder of the disputant visited the plot, the power of attorney holder found that construction was going on on said plot by opponent No.3. Thereafter the power of attorney holder of the disputant has visited the office of society but the office bearers denied to redress his grievance and to restore the possession. Thereafter disputant has filed the police complaint at Sakkardara Police Station on 18.12.2009. At that time, the disputant came to know that the allotment of said plot was cancelled behind his back by resolution dated 27.7.1980 and transferred the plot in favour of opponent No.3. On perusal of the plaint it appears that in para 7 it is mentioned that being a member of the opponent society an enquiry under Section 83 of the Maharashtra Cooperative Societies Act was made and the Deputy Director of Cooperative Societies, Nagpur City II was directed to bring truth on record.

Accordingly, said authority has conducted an enquiry and opponent No.1 called his official record and documents. The authority after concluding the enquiry held and communicated vide its official letter dated 28.9.2010 to the disputant and opponent society that opponent No.1 has acted illegally and contrary to the provisions of law and bye-laws while cancelling the suit plot and transferring and executing the subsequent sale deed dated 15.11.1979 in favour of opponent No.3. This communication gives fresh cause of action to disputant. The dispute is filed on 04.02.2011 which is within 6 years.

11. The applicants have placed reliance on the judgment of this Court in case of Southern Nagpur Co-operative Housing Society Ltd. V/s. Purushottam S/o Raghosao Shegaonkar and others reported in **2006 SCC OnLine Bom 773** in support of their argument that the limitation to file dispute before the Co-operative Court is 6 years, the Court is empowered to admit

the dispute after the expiry of limitation period if the appellants satisfy the Court that they have sufficient cause.

12. Here is the case where the cause of action to file dispute arose on 18.12.2009 and the dispute is filed on 04.02.2011 which is within limitation.

13. The plaintiffs have also relied on the judgment in case of Balwant S/o Sitaram Peshne since deceased through his LRs. Shalini Balwant Peshne and others V/s. Nagpur Co-operative Housing Society Ltd., Gandhibag reported in **2010 SCC OnLine Bom 636**. It is about computation of period of limitation from the date of issuance of notice. The relevant observations of para 32 of above judgment reads as follows:-

“32If issuance of notice, or receipt of reply, were allowed to be set up as starting point for limitation, or point of time when the cause of action accrues, the Limitation Act itself would be rendered superfluous, since in that case, a party could merrily postpone giving a notice invoking its rights and then claim that the limitation would start from the date it served such a notice.”

In case in hand, the dispute is within limitation without counting the period of issuance of notice.

14. The non-applicants have relied on the judgment in case of Harbanslal Sahnia and another V/s. Indian Oil Corpn. Ltd. and others reported in (2003) 2 SCC 107 and Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC wherein observations are made about revisional powers of Co-operative Court.

15. In view of above-said discussion to prove these facts it requires evidence and as the issue is already framed about limitation, the trial Court has rightly rejected the application. The interference at the hands of this Court is not required. Hence the application is rejected with no orders as to costs. Rule discharged.

At the time of pronouncement of judgment, the learned Advocate for the applicants requested for liberty to avail an alternate remedy to avoid question of limitation as period of 5 years has lapsed before this Court.

The respective learned Advocates for the non-applicants opposed the same.

Liberty to avail an alternate remedy is granted.

(MRS.VRUSHALI V. JOSHI, J.)