

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 12745 OF 2024

Vijay Shankar And Anr.

...Petitioners

***Versus***

Sai Vihar Residency Condominium, An Apartment  
Condominium Through Its President D. B.  
Paranjape & Secretary

...Respondent

---

Mr. Dushyant Purekar, a/w Rajat Dedhia, for the Petitioners.

Mr. Aniket Nangare, i/b R.S. Gangawane, for Respondent.

---

Digitally  
signed by  
ASHWINI  
JANARDAN  
VALLAKATI  
Date:  
2026.03.04  
11:35:00  
+0530

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : March 4, 2026

**Judgement :**

1. Rule. Rule made returnable forthwith and by consent of the parties, heard finally.

**Context and Factual Background:**

2. This Petition essentially lays a challenge to a Judgment dated April 25, 2024 (“***Impugned Order***”), by which, two Appeals being Appeal No. 4 of 2022 and Appeal No.1 of 2023 were disposed of by the Co-operative Court, Pune, which is the Appellate Authority (“***Co-operative Court***”) under the Maharashtra Apartment Ownership Act, 1970 (“***the Act***”), dealing with an

order dated October 12, 2022 passed by the Deputy Registrar, Co-operative Societies, Pune (“**Registrar Order**”).

3. At the heart of the dispute lies alterations and changes said to have been effected by the Petitioners, Vijay Shankar and Indira Shankar (collectively, “**Petitioners**”) in their apartment Flat No. C-12A (“**Subject Flat**”), in Respondent No. 1, Sai Vihar Residency Condominium, (“**Sai Vihar**”). The Subject Flat had been acquired by the Petitioners by an Agreement dated March 24, 2021. The various flat purchasers came together to form a condominium by Deed of Declaration dated September 10, 2004. The bye-laws of the Condominium have come into force pursuant to the said Deed of Declaration (“**bye-laws**”). One of the provisions in the bye-laws of the condominium is bye-law No.31(b), which prohibits any owner from making structural modifications or alterations in the unit or any installation in the unit, without obtaining previous permission of the association in writing through the President of the Board. The bye-law provides for the concerned unitholder being granted an opportunity of being heard by the Board and for objections to be called from other unitholders for such modifications and alterations. The Board would then recommend to the President for grant or refusal of permission for such alteration.

4. The Petitioners made an application dated June 30, 2021 to Sai Vihar for approval of certain renovation work in their flat. A detailed scope of work, containing about 16 items of work was communicated and two specific items were identified as modifications. The President of the Sai Vihar is said to have granted consent for the proposed work except for the two items identified as wall modifications. The two wall modifications entailed breaking down the brick wall between the kitchen and the third toilet to utilise the space towards dining area and to break the hall towards balcony side to set up reinforced French windows.

5. The Petitioners submitted a structural auditor report made by one Ace Consulting Engineers dated June 18, 2021 (“***Ace Report***”) to Sai Vihar. The Ace Report certified that the proposed modifications would not affect the structure in any manner and they would not be treated as structural modifications. The Petitioners contend that in the teeth of the Ace Report, Sai Vihar communicated that the two specific work items identified in the category of wall modifications must not be proceeded with. Meanwhile, the Pune Municipal Corporation (“***PMC***”) addressed a letter dated August 26, 2021 to the Petitioners, alleging that they had violated Section 260(1A)(b) of the Maharashtra Municipal Corporations Act, 1949, which was responded to by a letter dated September 9, 2021, giving clarifications and submitting photographs of the renovation.

6. On September 23, 2021, Sai Vihar sent a lawyer's notice to the Petitioners calling upon them to restore the demolished wall between the hall and the balcony and the wall between the kitchen and the third toilet, which were the modifications proposed by the Petitioners and specifically rejected by Sai Vihar. On October 6, 2021, the committee members of Sai Vihar met the Petitioners and directed that the two alterations of the walls would need to be recreated by the Petitioners. On October 9, 2021, the Petitioners too replied through their lawyers.

7. Thereafter, Sai Vihar carried out a structural audit of the Subject Flat through a structural consultant appointed by it namely, IVP Structural Consultants who gave a report dated February 1, 2022 (“*IVP Report*”). It is the Petitioners’ contention that the IVP Report explicitly returned a finding that the brick wall, which had been removed, is non-structural in nature and the concrete column between the door and the window which is a structural member has not been removed or demolished and in fact no damage was detected on it. The IVP Report also indicated that a non-structural partition brick wall has been created and the structural members in this regard have not been removed, demolished or damaged. A non-structural window was said to be projecting on the outer side and the non-structural partition brick wall constructed for opening of the toilet window and door had been constructed.

8. The IVP Report stated that it was a product of checking for structural components, if any, that had been removed, and for any damage by the Petitioners in the different locations as set out in the mandate. The IVP Report stated that the Petitioners had made some changes, but only in non-structural members like removal of brick wall and projecting the window on the outer side with the opening being filled by brick masonry and sunken slab.

9. Thereafter on March 29, 2022, Sai Vihar has filed a complaint before the Deputy Registrar seeking a relief of directing the Petitioners to restore the alleged alterations carried out by them and for compensation and costs. The Petitioners too filed a complaint before the same authority against Sai Vihar. In aid of the proceedings, the Petitioners appointed one more structural consultant namely, StrucPro Consultants which also gave a report dated May 24, 2022 ("**StrucPro Report**"). According to the Petitioners, the StrucPro Report clearly indicated that all the changes that had been made in the partition wall and the removal of non-structural members, did not create any loading distribution problem for the building.

10. It was certified that the Subject Flat structure was safe and sound, on the basis of a visual inspection and without any destructive or non-destructive tests being performed. The StrucPro Report also recommended that every five years, a periodic structural audit should be conducted for the

safety of the structure which has not been carried out on the 22-year old building. The report contained a disclaimer that the authors of the report would not be responsible for the stability of the total building, since their inspection was restricted to the Subject Flat.

11. By an order dated October 7, 2022, the Deputy Registrar, Co-operative Societies, Pune dismissed the complaint filed by the Petitioners. On October 12, 2022, the Deputy Registrar allowed the complaint filed by Sai Vihar by passing the Registrar Order. An explicit finding by the Deputy Registrar was that structural alteration had been carried out by the Petitioners. The Petitioners' grievance is that all the three reports of structural auditors had been completely ignored, only emphasizing on the fact that the board of Sai Vihar had opined that the alteration must not be carried out.

12. Sai Vihar filed Appeal No.4 of 2022 before the Co-operative Court. Sai Vihar's grievance was that the Deputy Registrar had failed to give any specific directions to the Petitioners to restore the removal of the walls in the Subject Flat. The Petitioners too filed Appeal No.1 of 2023 before the Co-operative Court challenging the Registrar Order on the premise that it ignored findings of there being no structural change or risk to the structure.

13. The Co-operative Court, after hearing the parties, directed the Petitioners to reconstruct the walls which had been removed and directed payment of compensation of Rs.2,000/- as costs to Sai Vihar.

**Contentions of the Parties:**

14. I have heard Mr. Dushyant Purekar, Learned Advocate for the Petitioners and Mr. Aniket Nangare, Learned Advocate for Sai Vihar and with their assistance, examined the material on record. The core grievance of Mr. Purekar is that there are three reports of structural auditors that form part of the record, and all three reports contain one unanimous conclusion, namely, that there is no “structural” alteration or risk to the structure due to the repairs in the Subject Flat. Yet, the Deputy Registrar had allowed Sai Vihar’s complaint and rejected the Petitioners’ complaint. The Petitioners are aggrieved that the Deputy Registrar has been arbitrary in disregarding the specific finding that there has been no structural modification to the Subject Flat on the part of the Petitioners.

15. Mr. Purekar would submit that the Co-operative Court indeed considered the submissions of the Petitioners about interpretation of the term “structural alterations” as extracted from *Black's Law Dictionary* but simply failed to deal with the aforesaid three reports. According to Mr. Purekar, the Impugned Order has restricted its consideration to the absence of grant of

permission for carrying out of renovations and therefore, the Impugned Order is arbitrary. He would submit that ignoring the opinions of professionals which was placed before the board of Sai Vihar, constitutes ignoring objective material resulting in an arbitrary decision. Both the Deputy Registrar and the Co-operative Court ought to have accepted the contents of the audit reports and allowed the complaint of the Petitioners and disallowed the complaint of Sai Vihar. This, he would submit, is evidence of high handedness of abuse of power on the part of the office bearers of the Board, and the President of Sai Vihar. They had also created physical impediments for movement of the truck carrying belongings of the Petitioners, necessitating intervention of the police to allow the truck to enter the premises of the condominium. Thereby, he would allude to positive discrimination against the Petitioners, which could not have been ignored by the two forums.

16. In contrast, Mr. Aniket Nangare, Learned Advocate for Sai Vihar would submit that it is the Maharashtra Apartment Ownership Act, 1970 (“*the Act*”) that governs the decision on the specific changes effected by the Petitioners, contrary to the stipulations in the bye-laws. The modifications include the removal of a window; a brick wall in the hall which is attached to the balcony; replacement of the same by a sliding glass door; removal of a brick wall of the toilet adjacent to the kitchen; projection of a window outside;

and the toilet window and door opening on the outer wall being filled, resulting in a change in the façade of the building.

17. Mr. Nangare would submit that the alterations and modifications have been rightly held to be in conflict with the requirements of the bye-laws and therefore, the categorical finding in the Impugned Order in reliance upon the specific provisions of the Act, namely, Section 7, Section 8 read with Rule 41(2) of the Maharashtra Apartment Ownership Rules 1972 (“**Rules**”) as indeed bye-law No.31(b) and 34(f), is a sound and valid finding and must not be lightly interfered with.

18. After the matter was heard on a couple of occasions, it was put to the parties to consider whether they could still resolve their disputes in the spirit of neighborliness by considering repairs and reconstruction of anything that affects the external façade of the building and otherwise not disturb any changes inside the Subject Flat that does not risk the structure and safety of the building. However, the parties were unable to arrive at a resolution, which necessitated adjudication of this Petition.

**Analysis and Findings:**

19. At the threshold, the following provisions from the bye-laws of Sai Vihar would be noteworthy:-

*“31(b) An owner shall not make any structural modifications or alterations in his unit or installations located therein without previously obtaining permission of the association in writing through the president of the board, who shall grant or refuse the permission as may be decided by the board. The concerned unit shall be granted an opportunity of being heard by the board. The board shall also call for objections if any from the unit owners for such structural modifications and alterations. The board on consisting all the aspects shall recommend to the president to grant or refuse the permission.*

*34(f) In no case, the exterior of the building shall be changed or modified, unless all the unit owners specifically decide in writing.”*

20. A plain reading of the foregoing would indicate that the phrase “structural modifications or alterations” in relation to any unit or installations located therein, has been used in Clause 31(b). Carrying out any such change would need the prior permission of Sai Vihar in writing through the President of the Board. The President is obliged to grant or refuse permission as decided by the Board. Indeed, an opportunity of being heard would be granted to the unitholder. The views of other unitholders would also be taken into account in making a recommendation. Likewise, under Clause 34(f), unitholders are prohibited from changing or modifying the exterior of the building without the unanimous consent of all unitholders in the building. This would be regardless of whether the changes are technically “structural modifications”.

21. It is in this backdrop that one must examine the reliance upon the three structural audit reports pressed into service on behalf of the Petitioners. I have also examined the contemporaneous correspondence between the parties in relation to the repair works undertaken in the Subject Flat, along with the structural audit reports. What is evident is that the three reports deal with matters of structural safety. They are based on visual inspection and the mandate given to the three structural auditors was to examine the threat to structural safety only arising out of the repairs carried out by the Petitioners.

22. However, if one examines the core legal issue, whether or not structural safety was compromised is one of the factors that would be considered by the Board and by other unitholders in the accord of their approval or disapproval of the proposed requests. However, they have the discretion to reject the changes in their perception of risk to the building which is indeed 22 years old, and said to not have been subjected to a structural audit.

23. A plain reading of Bye-law No.31(b) would show that the owner of a unit is obliged not to make any *structural modifications or alterations* in his unit without the prior written permission of the association. In the facts of this case, there was a prior written rejection of the proposal and yet the Petitioners went on to effect the alterations. The specific alterations include action that

has changed the façade of the building. The work included demolition of certain walls, installation of a window and the demolition of the wall of a toilet and installation of a projected window, which directly caused a change to the exterior of the building.

24. In the writ jurisdiction, this Court cannot sit in judgment over the decisions of the Board of the condominium in the same manner as the Court would examine decisions of a statutory authority. However, this Court would examine if the decisions of the Deputy Registrar and the Co-operative Court were in accord with constitutional guarantee of reasoned decisions and absence of arbitrariness.

25. Against this backdrop, one must examine the approach adopted by the authorities in their concurrent findings. Once a member of the condominium becomes party to the contract evidenced in the bye-laws of the condominium, he would be bound by the terms and conditions of that contract. If the contract provides for a specific prior written permission of the association in order to carry out any work, it would not be for the Writ Court to sit in judgment over the wisdom of the association as if it were an agency of the State falling within the ambit of Article 12 of the Constitution of India. However, whether the decision was arbitrary and whether the statutory

authorities who are charged with dispute resolution have acted in a reasonable manner is needed to be examined.

26. It is noted that the closing of the toilet window by filling brick masonry and opening a window externally indeed altered the exterior view of the building and changed the facade of the building just at the floor occupied by the Subject Flat. This is squarely contrary to bye-law 34(f), which required unanimous consent of all unitholders for such a change to the building wall and its façade and exterior wall. The President specifically communicated a rejection of the proposed change and yet the Petitioners powered on to effect the changes including to the outer wall. This is squarely in the teeth of the obligations contracted in bye-law 34(f) and the Impugned Order cannot be faulted in this regard.

27. Therefore, whether the other changes were “structural alterations or modifications” is the issue that remained and this was also considered in the Impugned Order. Indeed, structural safety or threat to it is a factor that would aid and assist the Board of condominium to decide whether or not to permit carrying out of a renovation. However, whether the change is structural or not, with or without a threat to structural safety is a question of fact that has to be considered by the Board of Sai Vihar. In my opinion, the

thrust of the Petitioners' contentions is that the three reports indicated no threat to structural safety.

28. Bye-law 31(b) does not link the changes and the right to permit or refuse permission to just structural safety. The structure and design of units in a building have ramifications for all others in the building and these can be outside the scope of structural safety too. For example, if one were to change the structure of a residence by bringing in handling of water and moving a wet area to a space that is not meant to have such wet handling, there could be leakage to the floors below, without any threat to structural safety of the building. This is just an example. Therefore, when a collective gets together and concludes a group contract, conferring power on a representative body to take decisions, it is a conscious choice made by the collective to enable such body to take decisions. Such decision may not be optimal to every member but would represent the lowest common denominator of what appeals and seems agreeable to the collective.

29. It is against this backdrop that one must examine the validity of the Impugned Order and see whether the Impugned Order is a product of any breach of due process and arbitrariness in considering the scope of its appellate jurisdiction. The Impugned Order clearly identifies the provisions of bye-law No.31(b) and bye-law No.34(f) and has objectively identified that the

modifications and alterations effected by the Petitioners were in the teeth of the positive refusal of permission by the association.

30. As stated above, evidently, the exterior of the building and the view thereof stood permanently modified with the window being filled up calling foul of by-law No.34(f). Since it is an admitted position that the Petitioners indeed carried out repairs without permission and indeed altered the view of the external wall of the building, in my opinion, no case has been made out to reject the approach adopted by the Co-operative Court in passing of the Impugned Order in relation to changes made to the exterior wall of the building. The Co-operative Court explicitly has accurately returned a finding that the repairs resulting in change to the façade carried out by the Petitioners in the Subject Flat was without permission or rather contrary to the requirements of the by-laws. No fault can be found in the objective finding in this regard.

31. As regards the other repairs, the Co-operative Court indeed considered the definition of “structural alterations” from *Black's Laws Dictionary* cited on behalf of the Petitioners. The Petitioners’ contention in this regard was that if there is no danger to the structure, the association ought not to have objected. The Ace Report is the only report made prior to the repairs to aid and assist the Petitioners’ advocating the changes, which they

themselves identified as modifications. The IVP Report and the StrucPro Report are both post-facto reports that comment on whether structural safety has been compromised.

32. In my view, it is not unfair or arbitrary to hold that the right to approve or reject is a right that is taken by consensus by the condominium. Such decision is more a decision based on the collective best judgment of all unitholders as what should be allowed or disallowed and what is desirable to approve to reject. Once one decides to live in a building that is managed by a collective such as a condominium or a co-operative society, individual unit holders merge their identity into the identity of the association. What is good for the collective whole is a matter that is best left to the domain of the collective. Every dissenting member's view is difficult to be accommodated to the fullest. The association is not meant to conduct a quasi-judicial procedure to decide upon matters as mundane as repair works, it is rather an administrative and executive decision on what appears in the best interests of all unitholders as a composite whole.

33. It would not be possible to run a collective unit like a condominium if each and every member decides to interpret on its own, whether or not a modification to the structure of a unit is not a “structural modification” on the premise that structural safety was not under threat. Such an approach could

lead to multiple disparate changes from multiple members, with none of them individually being a risk to structural safety, but indeed in the cumulative effect, could impact even the structural safety of the building.

34. The test of reasonableness to be adopted by this Court is to examine whether the Deputy Registrar and the Co-operative Court carried out their role in a reasonable manner. As far as the relationship between the Petitioners and Sai Vihar is concerned, it is a contractual one and that contractual relationship is determined by the provisions of the bye-laws, whose interpretation is to be examined for perversity. So long as the association has acted consistent with a plausible interpretation of the bye-laws, and has exercised its power in its own wisdom not to approve of the modifications in question, it would not be possible for the writ court to delve deeper into it and conduct an appellate review sitting in the writ jurisdiction.

35. The approach of the association in refusing the changes to the structure of the unit by breaking internal walls need not be informed solely by assessments of structural safety. In its wisdom, the association is entitled to refuse permission to a change to the structure. It may be arguable that a change proposed is not “structural” because of no threat to structural safety. However, if it is equally plausible to hold that the changes to the structure in the plain English meaning of the term “structure” is undesirable and is to be

refused, it would not be possible to second-guess that and substitute one plausible view with another plausible view.

36. When one sees how the Co-operative Court has discharged its appellate role from this perspective, in my opinion, no case is made out for finding fault with the Impugned Order. That apart, the Co-operative Court has indeed examined the Petitioners' reliance on interpretation of the term "structural modification" from *Black's Law Dictionary* and has in fact pointed out that the judgement of the Supreme Court in *Amrendra Pratap*<sup>1</sup>, where the Supreme Court has declared that dictionaries can be safe guides for discovering the meaning of words not defined in a statute, but can never be the final word on interpretation. The Co-operative Court has correctly held that words used in the bye-laws would need to take colour from the context and setting in which they have been used. Assigning of a meaning or a sense in one context may not be relevant for deployment in another context. The context in which the phrases are used in the bye-laws is to arrive at a common denominator that would work for all the unitholders of the Society.

37. The Co-operative Court has also gone on to extract from the reports filed by the structural auditors and has noticed that the report of IVP Report indeed indicates structural change. The bye-laws make no reference to safety

---

<sup>1</sup> *Amrendra Pratap Singh v. Tejbhadur Prajapati & Ors.* – *AIR 2004 SC 3782*

being the determinative factor for allowing or refusing a structural change. If every unitholder decides to bring in criteria and that too after making the changes disapproved by the collective, even safety may be compromised. Moreover, the Co-operative Court has also noticed the provisions of Section 7 and Section 8 of the Act as the context in which the bye-laws that bind every apartment owner including the Petitioners must be read. The element of safety is contained in Section 8 but in Section 7, it is clear that the bye-laws and their operation are administrative provisions, which indicates the legislature's intent is not to treat the Board's decisions as quasi-judicial functions. These provisions are extracted below:

*Section 7 - Compliance with covenants bye-laws and administrative provisions*

*Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment.* Failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners, or, in a proper case, by an aggrieved apartment owner.

*Section 8 - Certain work prohibited*

*Apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament **nor***

*may any apartment owner add any material structure or excavate any additional basement or cellar without in every such case the unanimous consent of all the other apartment owners being first obtained.*

*[Emphasis Supplied]*

38. The definitions of the Black's Law Dictionary pressed into service by the Petitioners is extracted below:

*Black's Law Dictionary – 1990 Edition:*

*Structural alterations or changes – One that affects a vital and substantial portion of a thing that changes its characteristic appearance, the fundamental purpose of its erection, and the uses contemplated. One that is extraordinary in scope and effect, or unusual in expenditure.*

*Black's Law Dictionary – 8<sup>th</sup> Edition 2004:*

*Structural alteration. A significant change to a building or other structure, essentially creating a different building or structure.*

39. To my mind, nothing turns on these definitions. These are meanings in a law language dictionary culled out of cases decided in their respective context. These are indeed, as rightly stated by the Co-operative Court, indicative but not determinative and conclusive. Even in legislation, typically definitions assigned are subject to variation where the context requires. Even then going by the meanings assigned in this dictionary, it is apparent that the repairs carried out at least to the extent of the exterior wall

changed the characteristic appearance of the building. Removing walls and filling up gaps by bricks did change the structure of the unit, perhaps without eroding structural safety, but nevertheless these were changes to structure, which in terms of the bye-laws were specifically disapproved and yet the Petitioners carried them out to present a situation with the suggestion that it is too late to change it i.e. a *fait accompli*.

40. In the facts of this case, there was a positive rejection of the two modifications by way of the administrative decision. If that was ignored on the premise of structural safety being the justification, Sai Vihar was entitled to have it remedied. The Deputy Registrar and the Co-operative Court have agreed with Sai Vihar in a plausible manner.

41. Therefore, I find no reason to interfere with the Impugned Order. The Petition is ***dismissed***. Considering the time taken for disposal of this Petition, the time to effect compliance with the directions upheld in the Impugned Order is extended by a further of six weeks from the date of upload of this order on the website of this Court.

42. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**[ SOMASEKHAR SUNDARESAN, J.]**

---

Page 21 of 21

March 4, 2026