

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

**APPEAL FROM ORDER NO.440 OF 2024
WITH
INTERIM APPLICATION NO.9436 OF 2024**

- | | | |
|--------------------------------------|---|----------------|
| 1. Shri Rohit S Thakkar |] | |
| The Secretary of Mulund Sejal |] | |
| Co-operative Housing Society Ltd. |] | |
| And | | |
| Smt. Kokila M Joshi |] | |
| The Chairman of Mulund Sejal |] | |
| Cooperative Housing Society Ltd. |] | |
| Having it's office at Plot no.1084 |] | |
| Devidayal Road, Mulund (West) |] | |
| Mumbai 400 080. |] | |
| | | |
| 2. Mulund Sejal Cooperative Housing |] | |
| Society Ltd. |] | |
| A Society registered under the |] | |
| Provisions of Maharashtra Coop. |] | |
| Societies Act under the Registration |] | |
| No.BOM/GEN/855 of 1975 and |] | |
| Having it's office at Plot No.1084 |] | |
| Devidayal Road, Mulund (West) |] | |
| Mumbai 400 080. |] | ...Appellants. |

V/s

- | | | |
|-----------------------------------|---|---------------|
| Sunil Omprakash Agarwal of |] | |
| Mumbai. Indian Inhabitant |] | |
| Residing at Flat No.6-A Premkutir |] | |
| 177 Marine Drive, Mumbai 400 020. |] | ...Respondent |

Mr. Rajesh Kachare, a/w Adv. Amol Mhatre and Adv. Sonal Dabholkar for the Appellants.

Mr. Arvind A. Taral for the Respondent.

**CORAM : KAMAL KHATA, J.
RESERVED ON : 23rd January, 2026.
PRONOUNCED ON : 28th January 2026.**

JUDGMENT:

1. This appeal arises from the judgement and order dated 1st March 2024 passed by the Hon'ble City Civil Court, Bombay, whereby the learned Judge was pleased to allow the Notice of Motion filed by the Respondent No.1 (original Plaintiff) restraining the Appellant - society from interfering with the possession of Respondent No.1.

2. Mr. Rajesh Kachare, learned Advocate for the Appellant, invites my attention to paragraph xviii at page 26 of the Plaint, which reads as under:

“(xviii) The Plaintiff say that on the suit land there was a kaccha structure which was in occupation and possession of Plaintiff and the Defendants Nos.1 & 2 have demolished the same to take undue advantage thereof.”

3. A plain reading of the aforesaid paragraph indicates that no structure existed in the society compound on the date of filing of the suit.

4. He next draws my attention to the Prayer clause (d) at page 29 which reads as under:

“(d) That in the event of the Defendants nos.1 and 2 claim possession of the suit land described at Sr. No.2 in Exhibit A to the Plaint the Defendants Nos.1 & 2 be directed to vacate and hand over the vacant possession thereof to the Plaintiff (e). That the Defendants Nos.1

and 2 jointly and severally be ordered decreed and directed by the Hon'ble to pay to the Plaintiff Rs.6,00,000/- being the compensation for claims and depriving Plaintiff of its rights to the suit land till date of the suit with further sum of Rs.1,50,000/- or such amount as this Hon'ble Court may fix till the Defendants Nos.1& 2 give up their claim on the suit plot as per Exhibit "H" to Plaintiff."

5. He then refers to paragraphs 8 to 13 of the impugned order and submits that the reasoning therein is contrary to the pleadings and the record. It is submitted that the Plaintiff had no subsisting right or ground to seek relief, since possession of the society dates back to 1976 - almost 45 years prior to the suit. Hence, by no stretch of imagination, after a passage of 45 years can the Respondent-Plaintiff claim to be in possession of a structure demolished decades ago. The order of deemed conveyance was passed in favour of the Appellant in 2016; the suit was instituted only in 2020 is therefore, hopelessly barred by limitation and suffers from gross delay and laches, disentitling the Respondent - Plaintiff to any relief.

6. It is further submitted that the Respondent has neither shown the existence of any structure in his possession nor produced photographs evidencing its demolition. The Trial Court, therefore, has clearly erred in granting relief to the Respondent. No proceedings were ever filed by the Plaintiff since 1976, when the

building was constructed and possession was handed over. It is inconceivable that such construction could have taken place without the Respondent- Plaintiff's knowledge. Although several other grounds are urged in the appeal memo, the Appellant submits that even on these grounds alone, the impugned order deserves to be set aside.

7. Mr. Taral, learned Advocate for the Respondent No.1, tenders a compilation of photographs in support of his submissions and the impugned order.

8. Upon examining the photographs, a pointed query was put to Mr. Taral as to which structure, if any, the Trial Court has protected and which is said to be in the Plaintiff's possession. The photographs reveal no existing structure whatsoever and do not establish possession as claimed. Neither the pleadings nor the impugned order discloses when the alleged structure was demolished or when the Plaintiff was dispossessed. When confronted with this, Mr. Taral maintained a stoic silence and was unable to point out any document in support of the contention.

9. In this backdrop, I find no reason to sustain the impugned order. Moreover, an Affidavit dated 16th October 2025 has been filed by the Appellant -Society undertaking to safeguard the Respondent's interest. Since the Resolution earlier placed on record did not

adequately reflect the intent stated in the Affidavit, the society has subsequently passed a fresh resolution dated 18th January 2026, whereby it has expressly resolved to not to utilize the area admeasuring 64 square meters area and its proportionate FSI which forms the subject matter of dispute in this Appeal. The Respondent's concern, therefore, stands sufficiently protected by the said undertaking.

10. *Prima facie*, on both counts – first, that the Respondent – Plaintiff has failed to establish the possession of any existing structure, and second, that the suit is ex-facie barred by limitation and therefore, the impugned order cannot be sustained as it is contrary to both facts and law.

11. The resolution passed by the Appellant – Society dated 18th January 2026 is accepted not to utilize the 64 square meters area and its proportionate FSI is accepted as an undertaking to the Court.

12. Accordingly, the Appeal is allowed.

13. Interim Application, if any, also stands disposed of.

14. The impugned order dated 1st March 2024 passed by the Trial Court is set aside.

15. There shall be no order as to costs.

(KAMAL KHATA, J.)