



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13637 OF 2025

Sharad Harihar Dave

....Petitioner

V/S

1. Fam Co-operative Housing Society Limited &

2. The Administrator, Co-operative Societies

....Respondents

Mr. Pradeep Thorat i/b Ms. Aditi Naikare *for the Petitioner.*

Mr. Mandar Bagkar i/b Mr. Ashish Pawar *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATE : 15 JUNE 2026.

P.C.:

1. The Petition challenges order dated 22 July 2025 passed by the learned Judge, Co-operative Court, Thane, in Miscellaneous Application Nos.01 of 2024 and 07 of 2024. The Miscellaneous Application No.01 of 2024 was filed by the Petitioner for correction of the judgment and award dated 19 October 2013. Miscellaneous Application No.07 of 2024 was filed by the Petitioner for amendment of the Dispute under provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908 (**the Code**). Petitioner desired correction of description of flat No.6 in operative paragraph 3 of the judgment and award dated 19 October 2013. According to Petitioner, flat No.6 was erroneously described as situated on second floor in prayer clause 26(b) of the Dispute when in fact at all other places, the flat was correctly described as being on the ground floor. Therefore, both the Miscellaneous Applications were filed

essentially seeking correction of the operative part of the judgment and Award dated 19 October 2013.

2. I have heard Mr. Thorat, the learned counsel appearing for Petitioner and Mr. Bagkar, the learned counsel appearing for the first Respondent-Society.

3. Perusal of the Memo of Dispute would indicate that flat No.6 was correctly described as situated on 'ground floor' in paragraph 1 thereof which reads thus:

"1. The Disputant states that he is a member and shareholder of Opponent No.2 in respect of Flat No.06, on Ground floor in Building No.43, admeasuring about 528 sq.ft. built up area, lying and situated at Plot No.19 & 19A, Sector-11, Koparkhairane, Navi Mumbai – 400 709. (hereinafter referred to as the **DISPUTE PREMISES** for the sake of brevity). The Disputant states that so far Opponent No.1 has not issued Share Certificate to him though required to be issued to each of the member and shareholder of their respective flats in society. The Disputant states that he is entitled to hold, posses and to have all rights, title and interest in pursuance of facts and circumstances as narrated, detailed and mentioned hereinbelow **as a lawful owner thereof.**"

4. However, inadvertently in paragraph 26(b) following prayer was raised.

"b) It be declared by this Hon'ble Court that the Disputant is entitled to get/obtain quiet, vacant and peaceful possession from the Opponents of dispute premises i.e. **Flat No.06, on Second floor in Building No.43, M/S. FAM CHS LTD., Sector-11, Koparkhairane, Navi Mumbai-400 709, admeasuring about 528 sq. ft. built up area, Tal. & Dist. Thane.**"

5. Thus, the description of flat No.06 got erroneously reflected as 'second floor' in paragraph 26(b) of the Dispute. However, in prayer

clauses (c), (d), (e), (f) and (g), description of flat No.06 is correct i.e. ground floor. On account of an error in paragraph 26(b) in describing flat No.06, it appears that the Co-operative Court has also erroneously reflected description of flat No.06 as on the second floor in operative paragraph 3 of the final judgment and award. The operative part of the judgment and award dated 19 October 2013 reads thus:

- “1. The dispute no.185/2007 is hereby decreed.
2. It is hereby declared that, the allotment letter dated 11/03/2003, reference no.FAM/ALT/03/03/1316, reference no.FAM/ALT/03/03/1316 allotting disputed flat in the name of the disputant on behalf of the society is still subsisting and binding upon the opponent society.
3. The opponent society is hereby directed to handover vacant and peaceful possession of disputed flat no.6 situated on the second floor of building no.43 in the opponent society having area of 528 sq. ft. to the disputant.
4. The disputant is hereby directed to pay necessary dues if any claimed by the society.
5. The opponent is directed to pay cost of the dispute to the disputant and bear its own.”

6. From the above, it clearly appears that description of flat No.6 as ‘second floor’ in paragraph 26(b) of the Petition is an obvious error. The said error has crept in the final award passed by the Co-operative Court.

7. In **Pratibha Singh and another vs. Shanti Devi Prasad and another¹**, the Apex Court has held that for enabling the Plaintiff to enjoy the fruits of the decree, the Courts can always utilize powers under Section 152 or Section 151 of the Code. Paragraph 17 of the judgment reads thus:

1 (2003) 2 SCC 330

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

8. Similarly, in **Peethani Suryanarayana and another vs. Repaka Venkata Ramana Kishore and others**² the Hon’ble Supreme Court has held in paragraph 10 of the judgment as under:

“10. The power of the court to allow such an application for amendment of the plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors viz. (i) the application must be bona fide; (ii) the same should not cause injustice to the other side; and (iii) it should not affect the right already accrued to the defendants.”

9. Mr. Bagkar submits that flat No.06 has already been allotted by the Respondent-Society to Mr. Irfan Sharif Patel and that therefore it is impermissible for either Co-operative Court or for this Court to now effect correction in description of the flat in operative part of the judgment of the Co-operative Court. He submits that rights of Mr. Irfan Sharif Patel would be affected by carrying out corrections in the

2 (2009) 11 SCC 308

operative part of the judgment and award. However, it appears that Mr. Irfan Sharif Patel had filed Interim Application (Stamp) No.1653 of 2026 seeking intervention, which has been rejected by this Court vide order dated 28 January 2026. In that view of the matter, mere so called allotment of flat No.06 in the name of Mr. Irfan Sharif Patel cannot be a ground for not permitting the Petitioner to correct the typographical error in operative part of the judgment and award dated 19 October 2013.

10. The Writ Petition accordingly succeeds in part and I proceed to pass the following order:

i) Orders dated 22 July 2025 passed by the Co-operative Court in Miscellaneous Application No.1 of 2024 and Miscellaneous Application No.7 of 2024 are set aside.

ii) The Trial Court shall proceed to carry out correction in paragraph 3 of operative part of the judgment and award dated 19 October 2013 by replacing the word 'second' appearing in line No.3 thereof by the word 'ground'.

11. With the above directions, the Writ Petition is partly allowed and **disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)