

AGK

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

WRIT PETITION NO.14561 OF 2025

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.02.12
19:14:28 +0530

Vaijayanta Shamrao Bhosale, wife of
deceased Shamrao Govind Bhosale
& Another

... Petitioners

V/s.

District Deputy Registrar & Others

... Respondents

Mr. Mayuresh Lagu i/by Mr. Sagar Patil. for the
petitioners.

Mrs. D.S. Deshmukh, AGP, for respondent Nos.1 & 2-
State.

Mr. Jayesh Joshi for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 11, 2026

P.C.:

1. The present petition is filed by the legal representatives of one of the co owners of the property. They question the legality of the order passed by the Competent Authority under Section 11 of the Maharashtra Ownership Flats Act, 1963. By the said order, deemed conveyance has been granted in favour of respondent No. 3 society. The effect of that order is that the title in the land and building stands conveyed to the society through statutory intervention. The petitioners contend that such an order could not have been passed in the facts of the case.

2. The learned Advocate for the petitioners has raised two principal objections. The first relates to the continuation of

proceedings against a deceased person. The second objection goes to the root of the matter. It is pointed out that respondent No. 3 society had earlier filed Regular Civil Suit No. 1293 of 2012 seeking enforcement of the very same statutory obligation under MOFA in respect of the same property. That suit was filed against opponent No. 1 and other concerned persons. By order dated 22 March 2024, the suit came to be withdrawn unconditionally. No liberty was sought or granted to file a fresh proceeding. Within a few months thereafter, in June 2024, the society initiated proceedings under Section 11 of MOFA before the Competent Authority. According to the petitioners, once the civil suit was withdrawn without liberty, the society was barred from agitating the same cause again. They rely on the principle underlying Order XXIII Rule 1(4) of the Code of Civil Procedure. The submission is that what cannot be done by filing a fresh suit cannot be achieved indirectly by resorting to summary proceedings under Section 11.

3. The learned Advocate for respondent No. 3 society, on the other hand, submits that the promoter has a statutory duty under MOFA to execute conveyance in favour of the society. If that duty is not performed, the statute itself provides a remedy under Section 11. According to him, such proceedings are not strictly governed by the Code of Civil Procedure. He argues that Order XXIII Rule 1(4) does not in terms apply to proceedings before the Competent Authority. It is his case that a statutory right cannot be defeated merely because an earlier civil suit was withdrawn. He contends that the right to seek deemed conveyance continues so long as the promoter fails to execute the conveyance.

4. I have considered the rival submissions. The question is not whether Order XXIII Rule 1(4) of the Code applies in terms to Section 11 proceedings. The question is whether the underlying principle can be ignored. The rule is founded on public policy. It ensures finality in litigation. It prevents a party from abandoning one proceeding and then starting another on the same cause of action, unless the Court has granted express liberty. If such liberty is not obtained, the law treats the withdrawal as a conscious decision to give up that remedy.

5. In the present case, the society had already approached the Civil Court seeking enforcement of the statutory obligation to convey the same property. The relief claimed there and the relief sought under Section 11 arise from the same cause. The suit was withdrawn unconditionally. No liberty was reserved. If, after such withdrawal, the society is permitted to invoke Section 11 for the same relief, it would defeat the very object of Order XXIII Rule 1(4). The form of the proceeding cannot override the substance. Though Section 11 provides for a summary remedy, it is nonetheless a legal proceeding to enforce the same right. The expression suit in Order XXIII cannot be read in a narrow and technical manner so as to exclude all other proceedings that are substantially in the nature of adjudication on the same cause.

6. The broad principle must apply. A litigant cannot be allowed to test one forum, withdraw without liberty, and then approach another forum for identical relief. If the society withdrew the suit on account of wrong legal advice, the proper course was to challenge the order of withdrawal or seek appropriate remedy in

accordance with law. It cannot bypass the consequence of its own act by invoking Section 11. This view finds support by way of Division Bench judgment of this Court in the case of *Hasmukh Narrotamdas Malkan vs. The District Deputy Registrar Cooperative Societies, Mumbai City-3 & Anr.*, Writ Petition (L) No.23026 of 2021 decided on 8 June 2023.

7. In view of this position, the impugned order passed by the Competent Authority cannot be sustained. The authority ought to have considered the effect of the earlier withdrawal. Failure to do so has resulted in an order that is legally unsustainable. The impugned order dated 28 August 2024 is therefore quashed and set aside.

8. The registration of the conveyance deed is only a consequence of the impugned order. Once the foundational order is set aside, the registration cannot survive. It also stands set aside.

9. The writ petition is accordingly disposed of in the above terms. There shall be no order as to costs.

10. The respondent No.3-society is at liberty to take appropriate steps to challenge/modify the order dated 22 March 2024 by which Regular Civil Suit No.1293 of 2012 filed by respondent No.3-society was withdrawn.

(AMIT BORKAR, J.)