



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.370 OF 2025**

M/s. Gandhi and Associates and Ors. ... Applicants
versus
Silvanus Building No. A Apartment Condominium
and Ors. ... Respondents

Mr. S.C.Wakankar, for Applicants.

CORAM: N.J.JAMADAR, J.

DATE : 10 MARCH 2026

P.C.

1. Heard the learned Counsel for the Applicants.
2. This Revision Application is directed against the order dated 19 June 2025 passed by the learned Civil Judge, Pune, whereby an application preferred by the Applicants – original Defendant Nos.5 to 9 for dismissal of the suit instituted by Respondent Nos.1 and 2, came to be rejected.
3. Respondent Nos.1 and 2 – Plaintiffs are the Apartment Condominium formed and registered under the provisions of the Maharashtra Apartment Ownership Act, 1970. Defendant Nos.1 to 4 have given development rights in favour of Defendant No.5 – Applicant No.1, a registered Partnership Firm, in respect of Plot Nos.2, 3, 4, 5 and 7 along with land under road and open space of land bearing Survey No.35/1. Defendant Nos.10 and 11 are the owners of Plot No.1 situated at Survey No.35/1, Pashan, Pune. Defendant Nos.6 to 9 – Applicants Nos.2 to 5 herein, are the partners of Defendant No.5

– developers of Silvanus project.

4. Asserting that the Defendants have, inter alia, failed to handover open space and club house which are common facilities for the apartment owners to the association of apartment owners, the Plaintiffs have instituted the instant suit. It is, inter alia, averred that, Defendant Nos.1 to 9 are using the club house for their personal and commercial use without the consent of the Plaintiffs. The Defendants have illegally sealed the club house and the access to common 5 meter common road is blocked by erecting a gate. The Plaintiffs have, thus sought relief of permanent injunction to restrain the Defendants from demolishing club house and/or carrying out any additional construction on club house or open space and/or changing the nature of the suit property; to restrain Defendant Nos.1 to 4 and 10 and 11 from creating any third party interest, charge, encumbrances over the suit properties and mandatory injunction directing the Defendants to restore the functional possession of the club house and to handover management of the suit property to the Plaintiffs.

5. The Defendant Nos.5 to 9 filed an application seeking dismissal of the suit on the ground that, neither of the Plaintiffs is a body corporate or legal entity. The suit at the instance of a non-entity is not tenable. Thus, the suit was liable to be dismissed in limine.

6. The Plaintiffs resisted the said application.

7. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that the Plaintiff Nos.1 and 2 are the association of apartment owners, formed and registered under the provisions of Maharashtra Apartment Ownership Act, 1970. There are clear and categorical averments in the plaint that the Plaintiffs are apartment condominium. Thus, the Plaintiffs cannot be said to be non-entity.

8. Mr. Wakankar, learned Counsel for the Applicants would submit that, none of the Plaintiffs is a juristic person. A condominium is not a separate juristic entity. Either all the apartment owners ought to have been joined in the suit or, in the alternative, a representative suit under the provisions of Order I Rule 8 of the Code of Civil Procedure, 1908, ought to have been instituted. It was submitted that, in the plaint, a bald assertion was made that the Plaintiffs were registered apartment condominium. Copies of the registration certificates were not annexed to the plaint. In these circumstances, when the suit itself by condominium was not maintainable, the trial Court ought to have dismissed the suit.

9. Learned Civil Judge has recorded in clear and explicit terms that, he has perused copies of the Deed of Declarations dated 3 May 2012 and 22 March 2013 registered with Registrar of Assurances. A copy of the resolution passed in a meeting of Plaintiff No.2 – Condominium dated 2 February 2025 in regard to the authorization was also perused and the suit appeared to have

been instituted on the strength of the said resolution.

10. Under the provisions of the Maharashtra Apartment Ownership Act, 1970, “an apartment owner” means a person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration. Under Section 3(j), ‘Declaration’ means the instrument by which the property is submitted to the provisions of the said Act, 1970, as provided by Section 2, and such Declaration as from time to time may be lawfully amended. Section 3(d) defines ‘Association of Apartment Owners’ to mean, all the apartment owners acting as a group in accordance with the bye-laws and Declaration.

11. Under the scheme of the Maharashtra Apartment Ownership Act, 1970, the association of apartment owners has been conferred certain rights, especially in relation to common areas and facilities in the capacity of the representative of body of apartment owners. For instance, under Section 6(6) of the Act, 1970, in relation to common areas and facilities, the association of apartment owners shall have an irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities therein or accessible therefrom or making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment

or apartments. Section 12A of the Act, 1970, provides that the apartment owners may by resolution passed by majority in special meeting of the Association of Apartment owners, change or amend the contents of the Declaration or Deed of Apartments. Section 19 of the Act further provides that, all sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except only (i) charge, if any, on the apartment for payment of Government and municipal taxes and (ii) all sums unpaid on a first mortgage of the apartment.

12. Under Section 23 of the Act, 1870, the Association of Apartment owners is empowered to bring action on behalf of two or more of the apartment owners. Section 23 provides that, without limiting the rights of any apartment owner, actions may be brought by the Manager or Board of Managers, in either case in the discretion of the Board of Managers, on behalf of two or more of the apartment owners as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentage established under the said Act, Declaration or bye-laws, shall be deemed to be binding on all apartment owners under Section 24(2) of the Act, 1970. To add to this, provisions have been made in the Maharashtra

Apartment Ownership Rules, 1972 and the model Bye-laws in relation to the Association of Apartment Owners.

13. A conjoint reading of the aforesaid provisions leads to an inescapable inference that the Association of Apartment owners has not been defined under the Act, 1970 for nothing. In relation to common areas and facilities, the association of Apartment Owners represents the interest of all the apartment owners. The decisions in regard to the body of apartment owners are to be taken in the meeting of the association of apartment owners. Thus, the submission of Mr. Wakankar that the association of apartment owners is a non-entity cannot be countenanced.

14. Under Section 3(p) of the Act, 1970, a person is defined to include a joint family. The definition of 'person' is, thus, inclusive. It would be contextually relevant to note that, under the provisions of Section 3(35) of the Maharashtra General Clauses Act, 1904, a 'person' shall include any company or association or body of individual whether incorporated or not. Resultantly, the submission that a registered Association of Apartment owners/Condominium cannot maintain a suit in relation to common areas and facilities cannot be accepted, unreservedly.

15. In any event, if an issue is raised on the count of tenability of the suit, the Civil Court will adjudicate the same on its own merits and in accordance with law. Hence, that cannot be a ground to non-suit the Plaintiffs at the

threshold.

16. Hence, the Revision Application stands rejected.

(N.J.JAMADAR, J.)