

Shabnoor

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

WRIT PETITION NO.2595 OF 2026

Sadashiv Nagappa Kadam ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

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Mr. Uday P Warunjikar a/w Mr. Sumit Kate, for the
Petitioner.

Mr. Kedar Dighe, Addl. GP a/w Mr. Y. D. Patil, AGP, for the
State – Respondent Nos.1 and 3.

MR. Dhakephalkar, Sr. Advocate (through V. C.) a/w MR.
Sachin Dhakephalkar, Suvarna Arhad and S. Vast, for
Respondent No.2.

Mr. Arman P. Khan, for Respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : MAY 4, 2026

P.C.:

1. The present petition calls in question the legality and correctness of the order rendered by the Divisional Joint Registrar in Revision Application No. 391 of 2024, whereby the contesting respondent No. 2 has been granted liberty to approach the respondent housing society for the purpose of seeking membership in respect of the flat forming subject matter of the dispute.

2. The challenge as mounted by the petitioner proceeds on the premise that once the Cooperative Court, by its award dated 10 March 1998, had conclusively declared the petitioner as the duly approved member and had further recorded a categorical finding

that respondent No. 2 possessed no right, title or interest in respect of the said flat, coupled with a direction for delivery of possession, it was not open for the Registrar, while exercising circumscribed jurisdiction under Section 79 or Section 154B-27 of the Maharashtra Cooperative Societies Act, 1960, to enter into or adjudicate upon issues pertaining to membership or proprietary rights in respect of the flat.

3. It is the contention advanced on behalf of the petitioner that the Revisional Authority has exceeded its jurisdiction in incorporating Clause (3) in the impugned order, thereby conferring liberty upon respondent No. 2 to apply for membership of the respondent society, which, according to the petitioner, runs counter to and is inconsistent with the binding award dated 10 March 1998 passed by the Cooperative Court.

4. In opposition, the learned senior Advocate appearing on behalf of respondent No. 2 submits that this Court, while adjudicating Writ Petition No. 3678 of 2000 along with the connected matters, had expressly observed that the award rendered by the Cooperative Court would remain subject to the final outcome of the civil suit concerning entitlement to the said flat, which was then pending adjudication before the competent Civil Court. It is further urged that as on the date when the aforesaid judgment came to be delivered, the civil suit was, in fact, not pending, having already been withdrawn, though such material fact was not placed before this Court at the relevant time. It is submitted that respondent No. 2 thereafter instituted Review Petition (St) No. 30028 of 2023, which came to be disposed of

with an observation that even in a situation where the substantive suit between the parties stood dismissed for non-prosecution, the same would nonetheless regulate and govern the inter se rights of the parties, as had been observed while disposing of the earlier proceedings. Proceeding on this basis, it is contended that the petitioner is precluded from asserting any right in respect of the subject matter, applying principles analogous to Order XXIII Rule 1 of the Code of Civil Procedure, 1908, which prohibits re-agitation of claims once the proceedings are withdrawn or abandoned.

5. On the strength of the aforesaid submissions, it is contended on behalf of respondent No. 2 that in view of the clarification issued by this Court in Writ Petition No. 3678 of 2000 and the connected proceedings, the award passed by the Cooperative Court has, in effect and substance, become inexecutable.

6. Having given hearing to the learned counsel appearing for both sides, and after careful looking into the record placed before this Court, it appears that the controversy goes to the root of rights in immovable property. The dispute concerns entitlement, ownership, and consequential rights flowing from such ownership in respect of the flat. The Registrar, while acting under Section 79 or Section 154B-27 of the Maharashtra Cooperative Societies Act, 1960, is conferred only with limited and supervisory powers, and not with powers of a court to decide questions relating to title or ownership. These provisions, do not empower the Registrar to undertake adjudication of substantive civil rights in immovable property. Therefore, when the Revisional Authority proceeds to grant liberty which indirectly touches upon entitlement and

membership arising out of alleged ownership, it in effect enters into an area which is beyond its competence.

7. It is an admitted position between the parties that execution proceedings are already pending under Order XXI of the Code of Civil Procedure, 1908. In those proceedings, respondent No. 2 has raised objections questioning the executability of the decree. The scheme of the Code makes it clear that all questions arising between the parties to the suit relating to execution, discharge, or satisfaction of the decree are required to be determined by the Executing Court itself. For this reason, even if the objections are styled differently, their true nature has to be seen. In the present case, the objections raised by respondent No. 2, when examined closely, fall within the scope of Section 47 of the Code. Therefore, it would be legally correct to treat such objections as an application under Section 47 and to leave the same for decision by the Executing Court. This course is necessary so that the Executing Court can examine all aspects, including questions of executability, in accordance with law and based on the material placed before it. At the same time, it is required to be clarified that while deciding such application, the Executing Court shall act independently and shall not be influenced by the fact that the present impugned orders are being interfered with by this Court. The Executing Court must apply its own mind and arrive at its conclusion on merits.

8. In view of the aforesaid discussion, and having regard to the overall assessment of the matter, this Court finds that the impugned orders passed by the Divisional Joint Registrar cannot be allowed to stand, as they suffer from lack of jurisdiction and

improper exercise of statutory power. The orders, therefore, deserve to be set aside.

9. In the result, and for the reasons recorded hereinabove, the petition succeeds, and the following order is passed:

(i) The impugned orders dated 2 August 2024 and 2 February 2026 passed by the Divisional Joint Registrar in Revision Application No. 391 of 2024 are quashed and set aside.

(ii) The objections raised by respondent No. 2 in the pending execution proceedings shall be treated as an application under Section 47 of the Code of Civil Procedure, 1908, and the Executing Court shall decide the same on its own merits, in accordance with law.

(iii) It is clarified that the Executing Court shall adjudicate the said application independently, without being influenced by any observations made in the impugned orders or in the present judgment, except to the extent of setting aside of the impugned orders.

(iv) All contentions of the parties on merits, including those relating to executability of the decree, are kept open to be urged before the Executing Court.

(v) There shall be no order as to costs.

(vi) Pending applications, if any, stand disposed of accordingly.

10. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)