



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7275 OF 2026

Leena Mansukh Gala and Anr

...Petitioners

V/s.

Date Bungalow Co Op. Hsg. Soc. Ltd

...Respondent

Mr. Y. R. Mishra *with Mr. Upendra Lokegaonkar with Sachidanand T. Singh for Petitioner.*

Ms. Aseem Naphade *i/b Mr. Jainish Jain for Respondent-Society.*

CORAM: SANDEEP V. MARNE, J.

DATED: 15 JUNE 2026.

P.C.:

1) The Petition challenges order dated 21 May 2026 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai dismissing A. O. No. 24 of 2026 and confirming the order dated 7 March 2026 passed by the Co-operative Court on Interim Application at Exh-5. The Co-operative Court has rejected the Interim Application at Exh-5 seeking interim injunction during pendency of the dispute.

2) I have heard Mr. Mishra, the learned counsel appearing for the Petitioners and Mr. Naphade, the learned counsel appearing for the Respondent. I have considered the submissions canvassed by them.

3) I have gone through the reasons recorded by the Trial and the Appellate Courts while passing the impugned orders. I have also perused the records of the case filed along with the Petition.

4) It must be observed at the very outset that the Petition is rendered infructuous on account of possession of the flats being taken over by the developer for redevelopment on 13 June 2026. It appears that the developer had filed Arbitration Petition(L) No. 3112 of 2026 under Section 9 of the Arbitration and Conciliation Act, 1996. By order dated 9 March 2026, this Court had directed taking over possession of respective units from Respondent Nos. 2 to 5 (which included the Petitioners) within 30 days of receipt of notice from the developer.

5) Mr. Mishra submits that the order passed by this Court on 9 March 2026 in Arbitration Petition (L)No. 3112 of 2026 is subject matter of pending Appeal before the Division Bench. Be that as it may. The Developer has admittedly taken over possession of the flats from the Petitioners on 13 June 2026. Faced with this difficulty, Mr. Mishra submits that the Petitioners are in the processes of filing the Application before the Appellate Court for restoring of possession of the flats. However, as of now, it is seen that the possession of the flats is already taken over from the Petitioners and the very purpose for seeking interim injunction by filing Application at Exh-5 has now come to an end. This is the reason why this Court has made an observation that the Petition is rendered infructuous.

6) Even if the factum of Petitioners losing possession of their flats is to be momentarily ignored, in my view no error can be traced in the orders passed by the Trial and the Appellate Courts. Petitioners are aggrieved by the resolutions dated 25 August 2024, 24 November 2024 and 26 January 2025 adopted by general body of the Respondent-society appointing a developer for a re-development of the society's building. The order of the Appellate Court addresses all the concerns sought to be raised by the Petitioners by recording its *prima facie* findings. So far as the contention of appointment of the developer being contrary to the tender conditions, the Co-operative Appellate Court has taken note of clause 2b to d of the tender under which the society through its general body has necessary power to modify/alter or amend or relax the tender conditions. So far as financial condition of the developer is concerned, the Co-operative Appellate Court has recorded *prima facie* finding about the fulfillment of financial criteria by the Development. The Co-operative Appellate Court has recorded following *prima facie* findings in its order:

29) By agenda notice dated 10/11/2024 the opponent society has conveyed a SGBM dated 24/11/2024 to discuss the proposed plans submitted by the developers and to discuss the financial offers of the developer. In the SGBM dated 24/11/2024 the majority members have given first preference to the offer submitted by M/s. Flying Earth LLP. The respondent society has issued agenda Notice dated 09/01/2025 for SGBM dated 26/01/2025 which is to be attended and presided over by authorised officer of the co-operative department. This meeting is called for appointment of developer for redevelopment of the building of respondent society and after due discussion and deliberation. M/s. Flying Earth LLP was selected as a developer by majority of 12 members and accordingly, the Development Agreement was finalised and executed by the society in favour of M/s. Flying Earth LLP. This development agreement is registered on 23/03/2025. The development agreement contains default and termination clause.

30) It is prima facie seen that as per Clause 2(c) and (d) of the tender document, the terms and conditions of the tender document can be modified by the society and the offer submitted by M/s. Flying Earth LLP was put up before the SGBM of respondent society dated 24/11/2024 which was accepted by majority of the members and the offer is finally put up before the SGBM dated 26/01/2025 which was accepted by the General Body of the respondent society by majority and the Development Agreement is executed and registered. As per clause 2(c) of the tender document clauses mentioned in DA will supersede those of tender unless not mentioned in DA. As such, it is prima facie seen that after execution and registration of DA the tender document has lost its existence and tender document merged into the Development Agreement. Hence, after execution of Development Agreement, the relief on the basis of tender document cannot be granted.

31) Moreover, from perusal of the financial assessment report of M/s.Prithvi Group filed on record at page No.251, it is prima facie seen that M/s. Flying Earth LLP is the part of M/s. Prithvi Group and from perusal of financial analysis, it is prima facie seen that M/s. Prithvi Group has fulfilled the financial criteria mentioned in the tender document.

7) In view of the above position, there is absence of *prima facie* case in favour of the Petitioners for grant of temporary injunction. The balance of convenience is clearly tilted against the Petitioners. The Society has apparently 17 flats and 14 members have cooperated in the redevelopment process. During pendency of dispute, the entire redevelopment project cannot remain in state of *Limbo*. In that view of the matter, it is otherwise in the interest of all the members that the redevelopment process is undertaken in an expeditious manner. No serious prejudice would be caused to the Petitioners on account of refusal of temporary injunction. Petitioners would receive all the benefits of the redevelopment as and when they execute agreement for Permanent Alternate Accommodation with the developer and the society. In my view, therefore no case was made out for grant of any

temporary injunction in favour of the Petitioners. The Trial Court has rightly rejected Application at Exh-5 by order dated 7 March 2026. Dismissal by Appeal of the Cooperative Appellate Court is also in order.

8) The Writ Petition is accordingly **dismissed**.

[SANDEEP V. MARNE, J.]