

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

FIRST APPEAL NO. 251 OF 2026

- 1) Mrs. Amita Jiten Desai Age - 67 years of]
Mumbai, Indian Inhabitant, residing at Flat]
No. 501, In 'C' Building of New Chadroday Co-]
operative Housing Society Ltd., Situated at]
Bhanushale Lane, Ghatkopar (East), Mumbai]
400077]
- 2) Mr. Jiten Manubhai Desai Age - 69 years of]
Mumbai, Indian Inhabitant, residing at Flat]
No. 502, In 'C' Building of New Chadrodaya]
Co-operative Housing Society Ltd., Situated]
at Bhanushale Lane, Ghatkopar (East),]
Mumbai 400077]

...Appellants

Versus

- 1) New Chandrodaya Co-operative Housing]
Society Ltd. Through their]
Chairman/Secretary, Situated at Bhanushali]
Lane, Ghatkopar (East), Mumbai 400077]
- 2) J Infraa Ventures Pvt. Ltd Plot No. A-781,]
T.T.C Industrial, Area, M.I.D.C, Khairane, Navi]
Mumbai - 400703]
- 3) M/s Dilip Sanghvi Consultants Architectural,]
Structural Consultants And Project]
Management Consultants (PMC), 101, Shri]
Saidham, Plot no. 55, 90 Feet Road, Vikrant]
Circle, Ghatkopar (East), Mumbai 400077]

...Respondents

Mr. Aman Saraf a/w Ms. Sakshi Agarwal i/b Mr. Bipin Joshi, for the Appellants.

Mr. Anoshak Daver a/w Mr. Kushan Kode, Mr. Kevin Pereira, Ms. Chinmaya Acharya, for the Respondent No. 1.

Mr. Amrut Joshi a/w Mr. Omkar Kulkarni, for the Respondent No. 2.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : March 23rd, 2026
PRONOUNCED ON : April 28th, 2026

JUDGMENT:

1. The First Appeal is at the instance of the original Plaintiff aggrieved by the impugned order dated 28th January, 2026 dismissing the suit under Order VII Rule 11(d) of Code of Civil Procedure, 1908 (for short '**CPC**') as barred under section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "**MCS Act**").

2. The Plaintiffs are members of Defendant No. 1-society and occupants of flat no. 501 and 502 in 'C' building of Defendant No. 1-society. The plaint impleads the society, the developer and the project management consultant as Defendants in the proceedings. The suit came to be filed seeking reliefs in terms of prayer clauses (a) to (s) as substantive reliefs and prayer clauses (t) to (v) as interim reliefs. Prayer clauses (a) and (b) seeks declaration that the Resolutions dated 23rd December, 2023 and 27th May, 2024 passed by the Defendant No. 1-society are illegal in law and not enforceable against the Plaintiff. Prayer Clauses (c) to (m) sought varied declarations as regards the area of the flats to be considered for redevelopment, the entitlement of the Plaintiffs, who are residents of Building "C" of Defendant No 1 Society, to similar benefits of redevelopment as given to the residents of Building "A" and "B", allotments in redeveloped building etc. Prayer

clause (n) is an alternate relief in respect of a garage of Plaintiff No. 1 seeking directions to Defendant No. 1 and 2 to allot the Plaintiff No. 1, permanent alternate accommodation in view of the area of the garage plus additional increase. Prayer clause (q) to (s) seeks permanent order of injunction against Defendant Nos. 1 and 2 from executing any development agreement in relation to the development of the buildings of Defendant No. 1-society and from carrying out any demolition. With these prayers, the suit came to be filed.

3. The Defendant No. 1 Society filed an application under Order VII Rule 11 (d) of CPC seeking dismissal of the suit on the ground that the suit seeks to challenge the resolutions which touch the affairs of the society, and hence, the jurisdiction of the Civil Court is barred by virtue of Section 91 of the MCS Act and that the resolutions are not *per se* only restricted to re-development but also pertains to *inter se* rights of the society and members which touches the business of the society and on the ground of pecuniary jurisdiction by reason of under valuation of the subject matter. The application came to be resisted by the Plaintiffs.

4. The impugned judgment, while rejecting the plaint, renders a finding that the plaint discloses that the Plaintiffs challenged the general body resolution, redevelopment benefits, entitlement of members, *inter se* rights of the society and the members which squarely touched the business and affairs of the society. The Trial Court noted

the judicial pronouncements that dispute regarding the redevelopment allotment or area falls within the ambit of Section 91 of MCS Act. The Court also held that the plaint suffers from defective valuation.

SUBMISSIONS :-

5. Mr. Saraf, Learned counsel for the Appellant would point out that the plaint seeks reliefs in respect of re-development of Defendant No. 1-society. Drawing attention of the Court to Section 91 of MCS Act, he contends that the said provision contemplates specified class of person in specified class of disputes and in the present case, the developer as well as project management consultant are parties, who would not fall within the specified class. He would further point out the prayers seeking permanent injunction against execution of development agreement and demolition and would submit that these prayers fall squarely within the jurisdiction of Civil Court. He would submit that without any resolutions, the Plaintiffs are carrying out soil testing and there is an apprehension that the building will be demolished and the reliefs of permanent injunction are sought which can be granted only by the Civil Court.

6. He would further submit that the dispute essentially pertaining to re-development is not a dispute touching the business of the society. He submits that the upholding of jurisdiction of Co-operative Court in respect of resolutions passed pertaining to redevelopment would lead

to an incongruous situation where the civil rights arising out of development agreement will have to be agitated before the Civil Court and the underlying resolutions will have to be entertained by the Co-operative Court. He submits that the law is well settled that dispute pertaining to re-development is not a dispute touching the business of the Society and the plaint seeks relief only in respect of re-development, which would lie before the Civil Court. He submits that the initial construction of the society and redevelopment have been held to be distinct activities and is not relatable to the business of the society. He would point out that this Court has considered the amended provisions of MCS Act to hold that where re-development is not one of the objects of the Society, as per the Bye-Laws, it cannot be said to be business of the Society. He would further point out the decision in ***Pranav Constructions Limited vs Priyadarshini Co-operative Housing Society Limited and Others***¹ holding that if the dispute does not touch upon the business of Society, the member will have to file Civil Suit for challenging the Resolutions.

7. Taking this Court through the impugned order, he submits that there is no discussion as to the pleadings of the plaint, the nature of relief sought and the Trial Court by a very cryptic order has dismissed the plaint. In support he relies upon the following decisions:-

i) Mohinder Kaur Kochar vs Mayfair Housing Private

1 2025:BHC-OS:10902-DB

Limited And Others²***ii) Parimal H. Solanki vs Bhoumik Co-operative Housing Society Limited And Another³******iii) Pranav Constructions Limited vs Priyadarshini Co-operative Housing Society Limited and Others (supra)***

8. Mr. Daver, Learned counsel for Respondent No. 1 would submit that all the reliefs sought by the Plaintiff primarily arise out of the resolutions passed by society in respect of re-development of Respondent No. 1-society. He has taken this Court painstakingly through the prayer clauses and would co-relate the same with the subject matter of the resolutions dated 23th December, 2023 and 27th May, 2024 passed by the Society which are under challenge. He submits that at the time of filing of the suit, the development agreement was not executed and came to be executed subsequently by reason whereof the only aspect available for challenge were the resolutions and minutes of meeting of the Society. He submits that civil rights over and above the rights as member would arise only upon development agreement being executed.

9. He submits that prayer clauses (c) to (s) are declarations in the nature of re-negotiations of the terms of the proposed development agreement, which are dependent on the challenge to the resolutions. He would submit that the relief of permanent injunction are also

² [2013 (1) Mh.L.J]

³ IA(L) No. 25993 of 2022 decided on 6th October, 2022 by Bombay High Court.

offshoot of the resolutions passed by Society. He has taken this Court through the pleadings in the plaint to contend that it is dispute between the Society and the Plaintiffs *inter se* as members and the impleadment of the developer and the project management consultant is immaterial. He submits that the action of the Respondent No 3, who is a consultant stands in the position of agent of disclosed principal, and the plaint constitutes a challenge to the act of the Society itself.

10. He would further submit that it is not the case of the Plaintiffs that they are discriminated which would be a civil action and the Civil Court would have the jurisdiction to adjudicate such cause. He submits that the Plaintiffs being members are covered by the class specified by Section 91 of the MCS Act. He submits that the Plaintiffs, by seeking diverse declarations in the form of reliefs, have created an illusory cause of action that the dispute is civil in nature. He submits that pleadings in the plaint would indicate that the Plaintiffs are aggrieved in the manner in which the meetings have been called and the resolutions have been passed, and therefore, challenge those resolutions. He submits that all actions by Respondent Nos. 2 and 3, till execution of development agreement, where the rights of person other than the member and society are sought to be created, will remain a dispute falling in the ambit of Section 91 of the MCS Act and touching upon the business of Respondent-society. He submits that any dispute between the members

and society has to be referred to the Co-operative Court in terms of byelaws No. 175 (B) which will also cover the dispute about appointment of developer and architect. He submits that the Plaintiff also challenged the project report as approved by Respondent No. 1- society by the resolution and the act of approval can only be challenged before a Co-operative Court and not directly by way of seeking declarations of purported rights. In support he relies upon the following decisions:-

i) Rajendra Bajoria And Others vs Hemant Kumar Jalan And Others⁴

ii) Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives And Others⁵

iii) Girish Mulchand Mehta And Another vs Mahesh S. Mehta And Another⁶

iv) Eknath Namdev Lashkare And Others vs Pancharatna Properties And Others⁷

11. Mr. Joshi, Learned counsel for the Respondent No. 2-developer would submit that Respondent No. 2 has right to be heard even though it had not filed an application under Order VII Rule 11 of CPC. He would further submit that management of society is different from business of a society and in this case, the Plaintiffs being members of co-operative housing society questions the decisions that touch on the management

4 (2022) 12 SCC 641

5 (2020) 7 SCC 366

6 [2010(2)Mh.L.J.]

7 WP No. 12956 of 2022

of the society. He submits that in the present case, the Plaintiffs as members are questioning the decisions that touch upon the management of the society and not the business of the society. He would submit that Byelaw 5 sets out the object of the society which is to manage, maintain and administer property of the society and clause (b) sets out the type of complaints to be made to the Co-operative Court and clauses (a), (e) and (g) particularly provide that disputes pertaining to resolutions of the managing committee and general body as also the disputes regarding the allotment of flats or plots or appointment of developer, contractor or architect are to be raised before the Co-operative Court. He would further submit that by way of clever drafting an illusory cause of action is created and meaningful reading of the plaint would indicate that there is no real cause of action against the Respondent No. 2-developer or the re-development *per se*. He would submit that there is no prayer seeking cancellation of any deed falling within the ambit of Section 31 of the Specific Relief Act, 1963 which could only be granted by Civil Court.

12. He submits that the resolutions challenged by the Plaintiffs are not only restricted to re-development but also pertain to *inter se* rights of the society and members including entitlement, and thus, Co-operative Court would have the jurisdiction under Section 91 of the MCS Act. In support he relies upon the following decisions:-

i) Deepen Arun Parekh vs Indian Overseas Bank And Others⁸

ii) Hemprabha Co-operative Housing Society Limited, Mumbai vs Kishore Waghela And Others⁹

iii) Murlidhar Datoba Nimanka And Others vs Harish Balkrushna Latane And Others¹⁰

iv) N.P. Ponnuswami vs Returning Officer, Namakkal Constituency And Others¹¹

v) JVPD Sterling CHSL (Regd) And Others vs Kamla Landmarc Builders And Others¹²

13. The issue arising for determination is whether the jurisdiction of the Civil Court is barred as the subject matter falls exclusively within the jurisdiction of the Co-operative Court under Section 91 of the MCS Act.

14. Section 9 of the Code of Civil procedure deals with the jurisdiction of Civil Courts. It declares that the court shall have jurisdiction to try all lawsuits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The contention of the Defendants is that the provisions of Section 91(3) of the MCS expressly bar the jurisdiction of the Civil Court as the subject matter falls within the class specified therein. Section 91 of MCS Act reads as under:

“91. Disputes.— (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, 3 [election of the committee or its officers conduct of general meetings, management

8 2024:BHC-OS:20634

9 2024(6)Mh.L.J.502

10 [2003(4) Mh.L.J.]

11 (1952) 1 SCC 94

12 2019 SCC Onl Bom 6792

or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a Co-operative Court, if both the parties thereto are one or other of the following :—

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a de-registered society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person ;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restriction have been prescribed under section 45, whether such surety or person is or is not a member of the society ;

(e) any other society, or the Liquidator of such a society [or deregistered society or the Official Assignee of such a de-registered society:

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefor, 12[or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided,] shall not be deemed to be a dispute for the purposes of this section.

(3) Save as otherwise provided under [sub-section (2) of section 93], no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any dispute referred to in sub-section (1).

15. A plain reading of Section 91 of MCS Act would indicate that the Co-operative Court would have jurisdiction only in case of the class of dispute specified therein between the class of parties specified therein. Therefore, the subject matter of *lis* as well as the parties to *lis* must fall within the provisions of Section 91 of the MCS Act. Section 91(a) of the

MCS Act contemplates: (a) dispute touching the constitution, (b) election of the committee or its officer; (c) conduct of general meetings of the Society; (d) management of the society and (e) touching the business of the society.

16. It is trite that while adjudicating an application under Order VII Rule 11(d) of CPC, it is only the averments in the plaint which are *germane*. It is impermissible to look into extraneous material. The bar against entertaining the dispute pertaining to re-development must be evident from the plaint itself. The Plaintiff's case as set out in the plaint is that the Plaintiffs are members of the Defendant No 1 Society, which consists of three buildings and Plaintiff's are in occupation of two flats in "C" building. In addition, the issue of ownership of garages in "B" and "C" building is raised. The plaint sets out the litigation in respect of the buildings and the order passed by the Municipal Corporation in respect of the unauthorised additions and alterations. The plaint further pleads about the notices of the special general body meetings, the passing of resolutions in relation to the re-development work, regularising the unauthorised additions and alterations of "A" and "B" building and appointment of project management consultant, the objections raised by the Plaintiffs, the entitlement of the Plaintiffs as regards the area in the re-development project and the appointment of the developer.

17. In paragraph 43 pertaining to cause of action, it is pleaded that the cause of action arose when the Plaintiffs received the letter by Defendant No.2 stating that they are not aware about the internal matters between the Plaintiff and Defendant No.1-Society and when the Plaintiffs were communicated that they had granted permission to Defendant No.2 to undertake trial soil investigation work. It is pleaded that since neither the Defendant No.1 or Defendant No.2 have corrected the manner in which they are carrying out the work of redevelopment on suit plot of land as such, there is continuous cause of action.

18. With this frame of suit, the Plaintiffs approached the Civil Court seeking diverse reliefs but undoubtedly pertaining to re-development of the Defendant No 1 Society. Prayer clause (a) and (b) challenge the resolutions dated 23rd December, 2023 and 27th May, 2024. A meaningful reading of the plaint would indicate that the dispute is between the Society and the members and the subject matter of the dispute is re-development of the Defendant No. 1 Society. The entitlement of the Plaintiffs, which are decided by the impugned resolutions, are entitlements in the context of the redevelopment process and cannot be said to decide the *inter se* rights between the society and the members *dehors* the redevelopment.

19. The real issue is whether the subject matter of the dispute, which

is in essence a challenge to the re-development of the Defendant No 1 Society falls within the jurisdiction of the Co-operative Court under Section 91 of the MCS Act. The substantive challenge in the suit is to the legality of the resolutions dated 23rd December, 2023 and 27th May, 2024. The resolutions are not annexed to the plaint and reference to the resolution dated 23rd December, 2023 can be found in paragraph 17 of the plaint, that the Society had passed resolution in respect of work of redevelopment to be carried out by the Society. The reference to resolution dated 27th May, 2024 is found in paragraph 18 of the plaint, that the Society passed the resolution approving the project report by the Defendant No 3 reducing the area of occupants of "C" building and omitting "C" garage of Plaintiff No 1 in stilt area.

20. The pleadings in the plaint discloses that the resolutions are in respect of re-development of the Defendant No 1 Society. In ***Mohinder Kaur Kochar vs Mayfair Housing Society Pvt Ltd*** (supra), identical issue arose for consideration before the Hon'ble Division Bench of this Court. In that case, the re-development agreement was entered into and suit came to be filed in the High Court by the developer, who was one of the members of the Society *inter alia* seeking declaration that the development agreement was binding. An objection of jurisdiction was raised in view of Section 91 of MCS Act. The Hon'ble Division Bench considered the object of the Society as per the Model Bye-Laws and

held that the business of re-development cannot be said to be business of the society. It held in paragraph 19 as under:

“19. When a co-operative housing society initially constructs the buildings for its members, it is not a redevelopment, but the initial development of the property. The initial construction of the property for a co-operative housing society is one of its prime objects. The two activities namely, initial construction of a building and its redevelopment are different activities. By passage of time, as the building becomes older, the Housing Society may take a decision to repair or redevelop the property. Such activity is totally different from initial development of the building. The dispute arising from such redevelopment, which becomes necessary by passage of time, is not "business" of the society. Such activity cannot be considered as 'touching the business' of the society. The dispute involving members, developers, managing committee in respect of redevelopment of the property which becomes necessary in view of passage of time, is not relatable to the business of the society. The initial development of the co-operative housing society of constructing the building may be business of the society, but the subsequent redevelopment is not.”

21. In that case, the Plaintiff was developer as well as a member. The decision of the Hon'ble Division Bench was not founded on the aspect of the Plaintiff being a member of the society or not. The Hon'ble Division Bench has considered the specific issue as to whether the redevelopment undertaken by the society can be treated as business of the society and in that context has rendered a specific finding that the dispute arising from such redevelopment is not business of the society. In the facts before the Hon'ble Division Bench, there was no challenge to the resolutions passed relating to redevelopment.

22. In ***Pranav Constructions Limited vs Priyadarshini Co-operative Housing Society Limited and others*** (supra), the Hon'ble Division Bench

of this Court was considering appeals filed under Section 37 of Arbitration and Conciliation Act, 1996 arising out of Section 9 of the Act and one of the issues before the Court was whether existence of dispute between the members and the Society about their entitlements flowing out of redevelopment process can be ground for the Court to abstain from making interim measures under Section 9 of the Act. It held that the resolutions adopted by the general body of the Society touching the business of the Society needs to be challenged under Section 91 of the MCS Act and if the resolution does not touch upon the business of the Society, the remedy for the affected party is to file civil suit. The finding of the Hon'ble Division Bench comes in answer to the question as to the exact forum which can go into the correctness of the resolution adopted by the general body of the Society.

23. The Hon'ble Division Bench has in effect applied the provisions of Section 91 of MCS Act, which requires both the party to the *lis* as well as the subject matter of the *lis* to fall within the purview of Section 91 of the MCS Act. The resolutions, if do not touch the business of the Society, will have to be challenged in the civil Court. The question as to whether re-development constitutes business of the Society will have to be answered with reference to the objects of the Society. By the Amending Act of 2019, Section 154B-1(17) brought the addition in the definition of Housing society as under:

“housing society” means a society, the object of which is to provide its Members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its Members common amenities and services and to demolish existing buildings and reconstruct or to construct additional tenements or premises by using potential of the land;

24. A plain reading of the amended definition makes it evident that re-development is one of the permissible objects of a housing society. Section 154B(31)(1) of MCS Act contains a saving clause in respect of the existing ByeLaws, which would continue to apply to the said society. Considering the amended definition, where a Society has amended its objects to include re-development as one of its objects, the dispute arising out of re-development would be a dispute touching the business of the Society.

25. In ***Bhoumik Co-operative Housing Society vs Vina A Sisawala***¹³, the Co-ordinate Bench has held that Section 154B(1)(17) is an enabling provision and the amended definition of housing society will not apply where the existing bye-laws do not include re-development as one of its objects. It held that dispute relating to the “business of the Society” necessarily require redevelopment to be business of the Society which would have to be seen from the Bye-Laws of the Society as to whether redevelopment has been included in the Bye-Laws.

26. A reading of the plaint in the present case does not disclose any pleadings as regards the objects of the Society from which it can be

¹³ S No. 1190 of 2019 decided on 10th August, 2022 by Bombay High Court.

conclusively discerned whether redevelopment is an object of the Society or whether pursuant to Section 154B(1)(17), the Society amended its Bye-Laws. The Bye-Laws are not part of the plaint. Though Mr. Daver and Mr. Joshi would strenuously urge this Court to take into consideration the Bye-Laws of the Defendant No 1 Society, which they attempted to tender, this Court declined to do so as that would tantamount to looking into extraneous material outside of the plaint. Determination of the objects of the Society, which requires adjudication on facts, is necessary to arrive at a finding as to whether the dispute touches the business of the Society. *Sans* the examination of the Bye-Laws of the Society, it is not possible on holistic reading of the plaint to arrive at a definitive finding that re-development is one of the objects of the Society and consequently the dispute touches the business of the Society and would be governed by Section 91 of MCS Act.

27. In ***Bank of India Staff Panchsheel Co-operative Housing Society Ltd vs Jitendra Kumar Jani & Ors*¹⁴**, the Co-ordinate Bench considered similar application under Order 7 Rule 11, where the dispute arising out of redevelopment was filed before the Co-operative Court and objection to jurisdiction was raised in context of the amended provisions. The Learned Single Judge held in paragraph 20 and 21 as under:

14 2025 SCC Online Bom 5358

"20. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Co operative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.

21. The submission based on Section 154B and the saving clause also does not justify rejection of the dispute at the threshold. The effect of the 2019 amendment, the nature of the enabling provision, and the impact of the saving clause are all matters requiring interpretation in the context of evidence and statutory scheme. They do not create an express bar to institution of a dispute by a member challenging resolutions of the general body. At the highest, they raise issues for adjudication on merits."

28. In ***Raizada Topandas And Anr. vs M/s Gorakhram Gokalchand***¹⁵

the Hon'ble Apex Court was considering the issue of jurisdiction of City Civil Court to entertain the suit seeking declaration of possession and injunction on the basis of an agreement dated 23rd June, 1955 appointing the Plaintiffs therein as commission agent. The defence raised was of sub-letting and the existence of landlord-tenant relationship. The preliminary issue of jurisdiction was decided against the Defendant by the High Court. The Hon'ble Apex Court noted the

15 (1964) 3 SCR 214

decision of Allahabad High Court in **Mt. Ananti v. Chhannu And Ors.**¹⁶ on the issue of jurisdiction at the inception of suit which had held as under:

"The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If ... he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief..... .. If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the nature of the suit, it not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety."

29. It is only after trial that it can be conclusively determined whether the object of the Society includes re-development or not, which if held affirmatively will result in the suit being dismissed for lack of jurisdiction.

30. The Respondent No.2-developer has taken a stand different from the Respondent No.1-Society. In the written submissions, it is admitted by Respondent No 2 that the Appellant's case that re-development is not business of the Society and bar under Section 91 is not attracted is the settled legal proposition. Mr. Joshi would however submit that the dispute arises out of management of the Society drawing support from the decision of **Hemprabha Co-operative Housing Society Limited, Mumbai vs Kishore Waghela And Others** (supra). The decision was

16 (1929) ILR 52 Allahabad 501

rendered in different factual context as in that case, after trial the issue of jurisdiction was answered in favour of the Society. The Dispute Application filed in the Co-operative Court sought eviction of the family members of deceased employee from the Society's premises. This Court held that the relief is confined to recovery of property owned by the Society and the dispute does not constitute employer-employee dispute. It held that management of the Society includes all acts necessary for protection and preservation of the assets of the Society. The decision does not assist the case of the Respondent No 2 as the issue arising for determination is whether dispute arising out of re-development is dispute touching the business of the Society. The decision cannot be stretched to mean that re-development means protection and preservation of assets of the Society.

31. In so far as defective valuation is concerned, Order VII Rule 11 (b) permits rejection of plaint, where the relief claimed is under-valued and the Plaintiff, on being required by the Court to so correct the valuation within a time fixed by the Court, fails to do so. This is not the case here.

32. Dealing with the citations relied upon by Mr. Daver, in the case of ***Rajendra Bajoria And Others vs Hemant Kumar Jalan And Others*** (supra), the Hon'ble Apex Court has held that if clever drafting has created the illusion of a cause of action then power under Order VII, Rule 11 of Code of Civil Procedure, 1908 should be exercised. The Court

has further held that if it is found that none of the reliefs sought in the plaint can be granted to the Plaintiff under the law, the question then arises is whether such a suit is to be allowed to continue and go for trial, which was answered in negative. There is no quarrel with the proposition of law, however, its applicability to the facts of the present case is doubtful as in that case before the Hon'ble Apex Court, the Plaintiff who were the legal heirs of partner of partnership firm sought decree for dissolution of firm and to disclose the full particulars of all assets and properties of the firm.

33. The decision in the case of ***Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives And Ors.*** (supra) sets out the principles governing the exercise of powers under Order VII, Rule 11 of CPC, about which there cannot be any dispute. However, in light of discussion above, without any evidence being led, it is not possible for this Court to arrive at a finding that the jurisdiction of the Civil Court is ousted.

34. In the case of ***Girish Mulchand Mehta And Another vs Mahesh S. Mehta And Another.*** (supra), the Hon'ble Division Bench of this Court was considering the application under Section 9 of Arbitration and Conciliation Act, 1996 where the general body of the society has taken a decision to redevelop the building and dispute came to be filed before the Co-operative Court by the members of the society challenging the

resolution. The Hon'ble Division Bench held that the members of the society had no independent right and as long as resolutions passed by the general body of the Society are in force and not overturned by a forum of competent jurisdiction, the said decision would bind the Appellant. The said decision has no applicability in the facts of the present case.

35. In the case of ***Eknath Namdev Lashkare And Others vs Pancharatna Properties And Others*** (supra), the Co-ordinate Bench held that the Developer is an agent within the meaning of Section 91(1) (a) of the Maharashtra Co-operative Societies Act and therefore, any dispute regarding his acts or validity of the authorization touches the business of the society and must be decided by the Co-operative Court. In that case, the dispute was filed before the Co-operative Court and the acts of Administrator in executing the Development Agreement and Power of Attorney in favor of Respondent No. 1 were under challenge. The question which arose for consideration is whether the Respondent No. 1 can be regarded as agent of the society and it was held that in dispute as regards these acts and validity of authorization necessary touches the business of the society. In the facts of that case, the Co-ordinate Bench was not concerned with the issue as to whether the object of the society included redevelopment by examining bye-laws of the society. The decision is therefore, distinguishable.

36. Coming to the decisions relied upon by Mr. Joshi, in the case of ***Deepen Arun Parekh vs Indian Overseas Bank And Others*** (supra), the issue pertained to the Deed of Guarantee. The decision was cited in support of Mr. Joshi's contention that Respondent No. 2 has right to be heard even though he had no right to file application under Order VII, Rule 11 of CPC.

37. The decision in the case of ***Murlidhar Datoba Nimanka And Others vs Harish Balkrushna Latane And Others*** (supra) was cited to support the proposition that where the power is given to do certain thing in a certain way, the thing must be done in that way or not at all which is the reiteration of the ***Nazir Ahmad vs. King Emperor***¹⁷ principles, about which there is no quarrel.

38. The decision in the case of ***N.P. Ponnuswami vs Returning Officer, Namakkal Constituency And Others*** (supra) was cited to support the contention that the remedy provided by the statute must be followed which is also not debatable.

39. In the decision in the case of ***JVPD Sterling CHSL (Regd) And Others vs Kamla Landmarc Builders And Others*** (supra), this Court had held that a party who does not approach the Court with clean hands is not entitled to any relief. The applicability of the said decision to the facts of the case is doubtful.

¹⁷ AIR 1936 PC 253.

40. The termination of the proceedings at the threshold is drastic and unless the plaint *ex-facie* discloses the bar, the power under Order VII Rule 11 (d) cannot be exercised. In the present case, a holistic reading of the plaint does not *ex-facie* disclose any bar on the jurisdiction of the Civil Court. Resultantly, the impugned judgment is unsustainable and is hereby quashed and set aside. Hence the following order is passed:

ORDER

(a) First Appeal is allowed.

(b) The impugned judgment and order dated 20th January, 2026 is quashed and set aside.

(c) S.C Suit No 2048 of 2025 is restored to file.

(SHARMILA U. DESHMUKH, J.)

41. At this stage, request is made for stay of the judgment for a period of 4 weeks. The judgment is stayed for a period of 4 weeks from today.

(SHARMILA U. DESHMUKH, J.)