

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 252 OF 2026

M/s City Tower Developer Pune Through Its ...Applicant
Partners Kamruddin Haji Babumiya Tamboli

Versus

City Tower Estate Coop Hsg Society Ltd, Through ...Respondent
Its Secretary Mohammed Faruk Saiyed

Mr. M.R. Barve, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE : 28th APRIL 2026

ORAL ORDER:

1. Heard the learned Counsel for the Applicant.
2. The challenge in this Application is to an order dated 28th January 2026 passed by the learned Civil Judge, whereby an Application for rejection of the Plaint preferred by the Applicant-Defendant, came to be rejected.
3. The Applicant is the promoter. The society has instituted a Suit seeking to restrain the Defendant from carrying out any construction over the suit property.
4. The learned Counsel for the Applicant submitted that in view of the amendment in Clause 4 of the Model Form V of the Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, ARS

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Management and Transfer) Rules, 1964, after the registration of the society, the Promoter is entitled to the additional FSI that may be available. The society has no right to claim the FSI. It was further submitted that since the society has instituted Suit for injunction simplicitor without seeking a declaration that the society is entitled to the additional FSI, a suit for injunction simplicitor is not maintainable.

5. I have perused the averments in the Complaint and the documents annexed thereto. It is trite, at the stage of consideration of an Application for rejection of the Complaint, only the averments in the Complaint are required to be considered. In paragraph 13 of the Complaint, the Plaintiff has categorically asserted that no balance FSI remains for development over the suit property. With such a specific case, the Plaintiff has approached the Civil Court seeking an injunction. Whether the claim made by the Plaintiff-society is correct, is a matter for adjudication at the trial. Conversely, whether the Defendant is entitled to exploit the FSI which is available on the suit property is again a matter for adjudication at the trial. All these issues cannot be delved into at the stage of consideration of the Application for rejection of the Complaint.

6. There is no legal infirmity in the impugned order. Neither there is a jurisdictional error nor the learned Civil Judge has exercised the

jurisdiction with material irregularity so as to warrant exercise of revisional jurisdiction.

7. Application thus stands dismissed.

[N. J. JAMADAR, J.]