

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2183 OF 2026
WITH
INTERIM APPLICATION NO.1277 OF 2026

Maharashtra State Coop. Housing
Finance Corporation ... Petitioner
V/s.
Bharat Coop. Housing Society Ltd. ... Respondent

Ms. Mayureshwari Korday with Mr. Nikhil Mhatre i/by
Mr. Akshay Deshmukh for the petitioner/applicant.

Ms. Mamta S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2026

P.C.:

1. The petitioner is the original disputant in proceedings under Section 91 of the Maharashtra Cooperative Societies Act. During the pendency of appeal, he filed an application seeking amendment of the dispute. Through that amendment he wanted to introduce three things. First, he wanted to place on record the statement of accounts. Second, he wanted to add the names of legal heirs of a defendant whose death had resulted in abatement. Third, he wanted to mention names of certain defendants upon whom service had not yet been effected before the Cooperative Court. The appellate Court refused this request. The correctness of that refusal is the issue.

2. The first part of the amendment concerns the statement of accounts. A statement of account is a piece of evidence. It is not a pleading. Pleadings contain facts which form the foundation of the claim. Evidence proves those facts. Order 6 Rule 17 of the Code permits amendment of pleadings only to correct or add material facts. It does not permit production of additional evidence through amendment. The Code separately deals with additional evidence at the appellate stage under Order 41 Rule 27. If a party wishes to produce account statements which were not produced earlier, the proper course is to satisfy the appellate Court that the evidence is necessary and falls within the requirements of Order 41 Rule 27. By inserting such material through amendment, the litigant attempts to bypass that scrutiny. Therefore the appellate Court rightly held that the request could not be entertained under Order 6 Rule 17.

3. The second part relates to bringing legal heirs of a deceased defendant on record after the dispute had already abated against that defendant. Abatement is not a procedural irregularity. It is a legal consequence that occurs automatically when substitution is not made within prescribed time. Once abatement takes place, the proceeding as against that party comes to an end unless the Court sets aside abatement on sufficient cause. This principle has been clearly settled. The judgment in *Jayalaxmi Janardhan Walawalkar v. Lilachand Laxmichand Kapasi* (1998) 3 Mah LJ 618 explains that legal representatives cannot be added by indirect means such as amendment or impleadment under general powers.

4. The reasoning is that the Code itself provides a specific procedure. Order 22 Rule 4 provides substitution of legal representatives within limitation. Order 22 Rule 9 provides setting aside of abatement upon sufficient cause. When the statute prescribes a particular method, the same result cannot be achieved through another route. If parties are permitted to add legal heirs by amendment, the limitation prescribed under Order 22 becomes meaningless. The Court would then revive a dead proceeding without examining delay or cause. That would defeat the scheme of the Code. Therefore, once abatement occurs, nothing survives against that party until abatement is set aside. Amendment cannot revive it.

5. Consequently, if the petitioner intended to continue proceedings against the deceased defendant, he had to first apply for setting aside abatement and explain the delay. Only after the Court allowed such application could substitution follow. Attempting to add legal heirs directly through Order 6 Rule 17 is legally impermissible and the appellate Court correctly rejected it.

6. The third part concerns defendants against whom the dispute had already been dismissed due to non service. Such dismissal is an order which has its own remedy. The proper course is to seek recall or setting aside of that order by showing sufficient cause under the applicable procedural provision. Amendment of pleadings cannot reopen an order which has already attained finality against those defendants. Amendment modifies pleadings. It does not nullify judicial orders.

7. For these reasons each part of the amendment application was legally untenable. The appellate Court did not refuse relief on technical grounds. It refused because the petitioner invoked a wrong provision for three different purposes. Each purpose had a specific remedy under the procedural law and the petitioner avoided those remedies.

8. The order of the appellate Court therefore calls for no interference. However, the petitioner is at liberty to pursue appropriate proceedings. He may apply for additional evidence under Order 41 Rule 27 or may seek setting aside of abatement under Order 22 Rule 9 or may seek recall of dismissal against unserved defendants by showing sufficient cause. If such applications are filed, they shall be considered in accordance with law.

9. The writ petition stands disposed of accordingly. No order as to costs.

10. In view of disposal of the writ petition, interim application does not survive and stands disposed of as infructuous.

(AMIT BORKAR, J.)