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

INTERIM APPLICATION NO. 7659 OF 2025

IN

SUIT NO. 364 OF 2025

Parshwa Padmavati Projects Pvt. Ltd.

Applicant

.. (Orig. Plaintiff)

IN THE MATTER BETWEEN

Parshwa Padmavati Projects Pvt. Ltd.

.. Plaintiff

Versus

Oshiwara Sahyadri Co-operative Housing Society
Ltd. and Ors.

.. Defendants

WITH

IN-PERSON APPLICATION (L) NO. 35224 OF 2025

IN

INTERIM APPLICATION NO. 7659 OF 2025.

.....

- Mr. Prathamesh Kamat a/w. Ms. Sneha Patil, Ms. Aditi Sinha, Ms. Isha Vyas and Mr. Bhavya R. Shah, Advocates i/by Maniar Srivastava for Applicant / Orig. Plaintiff.
- Mr. Nikhil Rajeshirke, Advocate for Defendant No.1.
- Mr. Mayur Khandeparkar, Advocate i/by Sandesh A. Daptare, Advocate for Defendant Nos.4, 5, 7, 8, 9, 11, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 40, 41, 43, 44, 46, 47, 48, 50 to 60 and 62 to 97.
- Mr. Rushikesh Kale, Advocate for Defendant No.18.
- Mr. Nitin Madhani, Director present in Court.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 11, 2026.

P.C.:

1. Heard learned Advocates appearing for the parties.
2. On 28.01.2026, after hearing learned Advocates, the following order was passed:-

"1. Heard Mr. Kamat, learned Advocate for Plaintiff, Mr. Rajeshirke, learned Advocate for Defendant No. 1 and Mr. Khandeparkar, learned Advocate for Defendants mentioned in the appearance clause.

2. Suit as originally filed by Plaintiff - Developer on 14.10.2025 represented by Mr. Kamat arrayed the Society as Defendant No. 1 and 96 members of the Society as Defendant Nos. 2 to 97. Some of these Defendants hold joint membership of flats. Society is comprising of 84 tenements / flats. There are certain incidents which occurred in the interregnum culminating into holding of Special General Meeting (SGM) of the Society on 25.01.2026 wherein Defendant No.1 Society has now resolved to go ahead with redevelopment of the Society with the Plaintiff Developer. Resolution passed by the Society is by majority and in that view of the matter, Society has resolved to withdraw the termination of the Developer which had initially resulted in filing of the present Suit in October 2025.

3. At the outset Mr. Kamat seeks to place on record a draft amendment and seeks permission to amend the Suit plaint and Interim Application. Draft amendment is taken on record and marked "X" for identification. He would submit that Plaintiff desires to seek appointment of the Court Receiver and persuades the Court to allow the same in the interest of justice in the event if there is dissent by dissenting members / Defendants. He would submit that since it is a pre-hearing amendment, same be allowed by Court. Considering that the said amendment is a pre-hearing amendment and is required to be allowed in such cases before the Court, the same stands allowed. Amendment is permitted to be carried out in the Suit as well as Interim Application seeking interim reliefs within a period of one week from today. Re-verification stands dispensed with. Copy of the amended plaint and Interim Application shall be served on all Defendants.

4. Out of 84 flats, Mr. Kamat has placed on record list of 61 members / Defendants (in respect of 53 flats) who have filed their joint limited affidavits. He would submit that these 61 Defendants for 53 flats have filed their joint limited affidavits supporting the Society and Plaintiff.

5. In respect of the resolution dated 25.01.2026 and the minutes of the SGM, additional affidavit dated 27.01.2026 is filed on behalf of Defendant No. 1 Society. Said affidavit is taken on record which is placed by Mr. Rajeshirke.

6. Mr. Khandepakar, learned Advocate appearing for some consenting Defendants informs the Court that out of 84 flats, 61 Defendants / members (in respect of 53 flats) have voted in favour of the Developer and desire to proceed with redevelopment. He would submit that the majority now supports the Plaintiff Developer for redevelopment.

7. It is trite law that members in minority cannot withhold

redevelopment unless and until there is a plausible or probable cause and objections are raised before the Court by them filing substantive proceedings and undoubtedly the same should be also convincing. Once the Society has in its SGM resolved to withdraw the termination of Plaintiff Developer and the majority resolution having been placed on record, there is no reason for the dissenting members in the minority to withhold or stall development. I am informed by Mr. Kamat that they were directed to be served sometime in October and he would inform the Court that all these Defendants were served by email thereafter on 24.01.2026. Affidavit of service to that effect is also filed by Mr. Kamat. Today when the matter is called out, none of these Defendants are present in Court. Prima facie the above timeline is very short. These dissenting Defendants shall have to be given time. They are directed by this Court to remain present either by themselves or through their Advocate before the Court on the next adjourned date to enable the Court to hear their grievance, if any, before passing further orders in the Interim Application which has been filed by the Plaintiff. They are directed to file reply, if any, to voice their grievance, to the Interim Application which has already been served upon them especially in view of the further development which has occurred in the matter pursuant to filing of the Suit proceedings and the SGM resolution dated 25.01.2026. Copy of the affidavit filed by Mr. Rajeshirke on behalf of the Society dated 27.01.2026 is directed to be served on each of the aforesaid dissenting Defendants by the Advocate for Plaintiff forthwith to enable them to consider the same and place their objections before the Court. Appropriate affidavit of service to that effect shall be filed on the next adjourned date. Copy of this order shall also be served on them.

8. It is clarified that if the dissenting Defendants do not remain present on the next adjourned date despite being served, this Court shall consider to hear the parties before the Court and pass appropriate orders in accordance with law which shall be noted by them. Defendant No. 1 Society is also directed to serve copy of this order to all the aforesaid dissenting members - Defendants in their respective flats for their intimation so that they all are made aware about the present proceedings and if they are seriously concerned, they are directed by Court to come and voice their grievance before the Court for consideration.

9. Stand over to **4th February, 2026** under the caption "**for Directions**".

3. On 04.02.2026, after hearing learned Advocates, the following order was passed:-

“1. Heard learned Advocates appearing for the respective parties.

2. The order dated 28.01.2026 stands complied with and Affidavit to that effect has been filed by Mr. Rajeshirke.

3. Pursuant to the previous order dated 28.01.2026, it is prima facie seen that today when the matter is called out for hearing, out of original 31 dissenting members 14 members have already filed their consents. In that view of the matter, there are 17 dissenting members now. Their names are individually called out in open Court at 01:30 p.m., out of 17 names are called out, 4 members namely concerning Flat Nos.106, 138, 145 and 165 have come forward before this Court and expressed their views.

4. In so far as Flat No.118 is concerned, the name of the member is Arvind K. Oberoi. He is represented by Mr. Kale. He informs the Court he is out of India and returning back on Sunday. Be that as it may, unless and until any cogent evidence of illegality or inaction on the part of the Developer or the Society is pointed out to the Court, this Court makes it clear that the dissent of the member will not be affect the redevelopment. One final opportunity is given to Mr. Oberoi as also the other 12 members who are not present today to voice their grievances to the Court on the next date failing which this Court shall pass appropriate orders in accordance with law.

5. In so far as the proceedings filed by the Developer are concerned, the Society in this case is represented by Mr. Rajeshirke. It supports the Developer and represents and espouses the cause of majority of the members. There are total 84 members out of which 71 have now already consented. In so far as the other 13 are concerned, they are not present today and hence once final opportunity is still given to them.

6. In so far as members of Flat Nos. 106, 138, 146 and 165 are concerned, I have heard Mr. Dhamapurkar, Mr. Pramod R. Vatkar and Mr. Vijay G. Kanade on his behalf and on behalf of Suchita V. Kanade and Mr. Shailesh Nar. Written note is filed before the Court in their own hand writing. What is seen by the Court is that these members have expressed their anxiousness and apprehension in view of what not only they but what all members of the Society have suffered over the past 15 years. They have informed the Court that the building of the Society is in a dilapidated condition and requires redevelopment, but due to the enormous delay that has occurred in the past, they are extremely apprehensive. Members have explicitly made clear that and they do not wish to delay any redevelopment, but have voiced their grievances to the Court and would submit the Court that they should not be singled out by the Developer or by the Society for expressing their independent stand. There is nothing in different expressed in the letters which have been given to the Court. What is expressed in the said letters is that all

possible measures and caution needs to be undertaken by the Society while entering into the Development and Agreement and implementing the same in the best interest of all members of the Society.

7. It is therefore made clear that even if these members have expressed their independent views, the Society will ensure that the Society and the developer shall treat them at par with all other members and all benefits which are given to all other members are also given to them so that there is no discrimination whatsoever. If at all any discrimination is pointed out by the members at any time, liberty is given to these members to apply to the Court forthwith. They are also ready and willing to sign the consent Affidavit as signed by the other consenting members which shall be done by them within one week.

8. Needless to state that all members who have consented can sign PAAA in accordance with law. In so far as the other dissenting members are concerned, 12 dissenting members are not present in Court. They are concerned with Flat Nos.101, 105, 111, 113, 114, 115, 126, 143, 146, 151, 155 and 168.

9. It is clarified that these dissenting members do not voice their grievances, they will strictly have to fall in line with the other majority members who have consented.

10. The letters given by Mr. Kanade and Mr. Vatkar are taken on record.

11. It is clarified that the interim orders passed required by the Plaintiff for appointment of Court Receiver in respect of the aforesaid dissenting members will be passed on the next date after hearing their grievances, if any.

*12. List the matter on Board on **11th February 2026**. To be placed under the caption '**First on Board**'.*

13. Copy of this order shall be conveyed to the aforesaid dissenting members by the Secretary of the Society for their information."

4. In compliance of the aforesaid orders, Affidavit on behalf of Defendant No.1 – Society dated 10.02.2026 is filed. The same is taken on record. Dissenting members who are Defendants have been informed of the above order. Present Interim Application No.7659 of 2025 is finally disposed by this order.

5. For grant of prayer clause 'a' the facts already noted in the previous two orders dated 28.01.2026 and 04.02.2026 are not repeated for brevity. Out of total 84 members, 72 members have consented for redevelopment before hearing of the Application has commenced today. Defendant No.18 has also agreed to sign the consent as informed by Mr. Kale. The order dated 04.02.2026 called upon the 12 dissenting Defendant - Members to remain present and voice their grievances before the Court. Their names are called out in Court. Out of the 12 dissenting members, today 4 dissenting members namely Defendant No.2 – Bharti Devi Sagar, Defendant No.10 – Rajesh V. Dhere, Defendant No.14 – Chitra Abhijit Adarkar, represented by her husband Abhijit Adarkar and Defendant No.38 – Zarin Hudda are present before this Court today. Rest of the Defendants have chosen not to appear before Court. There is one more Defendant who has already given her consent namely Payal Tama who has remained present today and expressed her grievances to Court. Her grievances are the same which were voiced by the dissenting Defendants at the time of passing of previous order dated 04.02.2026. The four dissenting Defendants present before me have stated that they have no faith in the present Developer which has been appointed by the Society since their confidence in Development of their building / Society by any builder whosoever stands completely eroded in view of the fact that the previous builder had taken more than 12 years after his

appointment and did not take any steps for redevelopment neglecting the building of the Society resultantly leading it to be classified as C-1 category building.

6. The dissenting members present would submit that the present Developer has been appointed for the past four years, but even he has delayed redevelopment. That apart, they have submitted that the previous Developer is in jail which should weigh with the Court before considering passing any order.

7. One of the grievance which *prima facie* appeals to the Court as voiced by these dissenting members is that since they have dissented, they should not be discriminated by the Developer and the Society or MC of the Society as against the other members of the Society who have filed their consents. One of the ground which they have stated before Court is that there are certain clauses in the PAAA which do not inspire their confidence in appointment of the Developer since they all desire that specific timelines should be stated for redevelopment in the Development Agreement as also PAAA. Except Defendant No.38 they agree receiving Rs.1 lakh upto now but have not received anything further. In so far as Defendant No.38 is concerned, the Developer informs that she was also offered the earlier payment of Rs.1 lakh but she refused to accept it without interest.

8. I have heard the aforesaid four dissenting members who are present in Court in-person. I wish to make one thing very clear to the dissenting members that in the present case majority members have consented for redevelopment. Condition of the building is not at all happy. It is classified as C-1 category i.e. evacuate and demolish. It is stated that in such a case dissent leads to the inevitable i.e. delay and unless there are *malafides* involved or totally colourable exercise of power by the Society, the delay is something which will affect and prolong redevelopment of the Society. The majority of the members in the present case namely 72 out of 84 have consented save and except the 4 members present before me. Other 8 members have chosen not to remain present before Court and hence will have to face the consequences of this order. At the highest, I can assure the four members who have voiced their grievances before me today that they will not be discriminated with by the Developer or the Society whatsoever and their rights will be at par with all the 72 members of the Society who have consented. I have interacted with them in Court and find that their apprehensions are genuine and they do not want to oppose development, but all that they want is definite compliance. I do not blame them after what they and the Society members have weathered for the past several years at the hands of the previous Developer. However the Court has to follow the law, but equally reassure the litigant before the Court to have faith in the judicial and

justice system. I must caution the dissenting members that if the project gets delayed not only the Developer but the Society and the other members can always in an appropriate proceeding hold these dissenting members liable both to make restitution and in damages. If any minuscule minority dissenting members are resisting to vacate, they have no choice in the matter. They will do what the law requires them to do. The Development Agreement signed by the Society binds the dissenting members since the Development Agreement itself is backed by an undisturbed general body resolution of the Society which seals the fate of the dissenting members. Reliance in this regard is placed on a decision of this Court in the case of ***Westin Sankalp Developers Vs. Ajay Sikandar Rana and Ors.***¹

9. To put in perspective Mr. Kamat, learned Advocate appearing for Developer as well as Mr. Khandeparkar, who appears for majority of the members of the Society apprise the Court that the PAAA which has been approved by the General Body for all members and which has been signed by a total number of 72 members up till date is the same PAAA for all members including those who are present and not present before the Court today.

10. Mr. Rajeshirke, learned Advocate appears for Defendant No.1 – Society. He also assures the Court that the PAAA draft which has been given to the members is absolutely identical and at par for all

¹ Comm. Arbitration Petition (L) No.221 of 2020 – Decided on 19th March 2021

members alike.

11. Considering the observations made in the previous two orders dated 28.01.2026 and 04.02.2026 and after hearing the four dissenting members, at this stage the four dissenting members present before me have agreed to file their consents for redevelopment and go with the majority.

12. In that view of the matter, the present order will now apply to the other remaining 7 members who are not present before the Court. They are Defendant No.6 – Jagannath Mahale, Defendant No.12 – Dinesh S. Kothari, Defendant No.13 – Prabha S. Koparde, Defendant No.24 – Taranjit Kaur Neb, Defendant No.42 – Chandrakant Khirade, Defendant No.45 – Sopan Khule, Defendant No.49 – Vionod Narayan and Defendant No.61 – Vijay N. Pugalia. Defendant No.18 – Arvind K. Oberoi has today consented through Advocate Kale.

13. Attention is drawn to the decision of this Court in the case of ***Westin Sankalp Developers (supra)*** and specifically to paragraph Nos. 15 and 17 of the said decision which apply to the facts of the present case and are reproduced below for immediate reference:-

“15.A dissenting member of a Co-operative Society cannot be heard to say that he or she will continue to obstruct redevelopment and would not be liable to vacate his premises until the last of the consenting members vacates. Obviously, as the facts of the present case would indicate, the consenting members were ready and willing to vacate their premises, having entered into agreements with the Society and the Developer, but as a result of the intransigence of a few

dissenting members that the redevelopment is obstructed. As a matter of fact, as of date, most of the members who have consented to the redevelopment have vacated their premises. 149 out of 160 members have vacated. They have left their homes in the expectation of an early redevelopment. The Appellant has disclosed that it has incurred expenses of Rs.6.36 crores so far.

..... In this state of the matter, it is neither in the interests and welfare of the large majority of members constituting the co-operative society or of the Appellant, who is a party to the Development Agreement to allow a state of impasse to continue.

16. xxxxxxxx

17.Secondly, in the present case, an overwhelmingly large proportion of the members of the Society have consented to the scheme of redevelopment and have in fact vacated their premises. The interests of those 149 members who are supporting redevelopment and of whom 143 have vacated are of paramount concern. Thirdly, unless a receiver was to be appointed, it will be open to a dissenting minority of a few members to obstruct and defeat the will of the large majority. Fourthly, each of the dissenting members is also, like all the members of the Society, entitled to permanent alternate accommodation free of cost in the redeveloped building.

..... In the meantime, each of the members shall be entitled to compensation for transit accommodation as agreed with the Co-operative Society and as paid to all other members. This is not a case where a scheme of redevelopment is oppressive to the legitimate interests of a minority nor has any such submission been urged.”

14. I have perused the Interim Application and record of the case and in view of the above, I proceed to pass the following order:-

15. For the reasons stated in the Interim Application and the observations and findings in the previous two orders dated 28.01.2026 and 04.02.2026 and above observations herein, Interim Application stands allowed in terms of prayer clauses (a), (a1) and (b) to the extent of the seven (7) non-consenting and non-complying Defendants. Prayer clauses (a), (a 1) and (b) read thus:-

- “a) *that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to order directing Defendant Nos. 2 to 97, their family members, servants, agents and/or person or persons claiming through or under them to comply with the terms of the Suit Agreements and vacate and handover Flats in possession of Defendant No. 2 to 97 in the Suit Property to the Plaintiff for purposes of demolition and redevelopment in accordance with the terms of the Suit Agreements;*
- (a1) *Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay or any other fit and proper person as receiver on the Property with all powers under rule 1 of Order XL of the Code of Civil Procedure, 1908 including the power to take physical possession of the Flats in possession of the Defendants in the Suit Property, their family members and / or any person found in occupation thereof with the help of police assistance if necessary, and to hand over the same to the Plaintiff for demolition and re-development of the Property in accordance with the Development Agreement dated 10th December 2011, Development Agreement dated 10th March 2023, Deed of Rectification dated 23rd March 2023, Supplemental Agreement dated 6th September 2024, Further Supplemental Agreement dated 25th October 2024, Further Supplemental Agreement dated 16th April 2025;*
- b) *pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to pass an order of temporary non injunction restraining the Defendants, by itself or through its members, committees, employees, agents, servants, etc. or any person claiming through or under them, from, in any manner, creating any third party rights in respect of the Suit Property, appointing any person as a developer or contractor in respect of the redevelopment, development or reconstruction of the Suit Property in any manner whatsoever including but not restricted to self redevelopment and/or parting with the possession thereof in favour of any person other than the Plaintiff and/or its representative.”*

16. Mr. Khandeparkar, learned Advocate on behalf of the majority tenants and Mr. Rajeshirke, learned Advocate on behalf of Defendant No.1 – Society persuade the Court that in view of this order, the Developer be directed to deposit the amount as agreed in the Development Agreement payable to the dissenting member with the

Society so that the dissenting members or non-complying members if at all they need to withdraw the same, they can have easy access for withdrawal of the same rather than approach this Court which is a cumbersome and costly affair. This request made by the learned Advocate appeals to the Court. Mr. Kamat also joins and supports this suggestion so that the members of the Society are not put to any further hardship and undertakes on behalf of Developer to abide by all obligations in the Development Agreement in accordance with law.

17. That apart, there is one more request which has been made to the Court by some members present in Court with respect to the time for vacating the premises. Mr. Khandeparkar, learned Advocate informs the Court that the Society had resolved as far back as in September 2025 in the General Body that the time for vacating the flats of the Society buildings would be by 01.03.2026. However the unpleasant situation of litigation in the meanwhile has permeated and caused some delay in the present proceedings.

18. Be that as it may, since this order is passed today in the Interim Application filed by the Developer which is now supported by Defendant No.1 – Society as also majority of the 76 members out of total 84 members, in order to ensure that no inconvenience is caused to the members who may not have made the arrangement for shifting and to give them some buffer time, the date for vacating the flats is

directed to be shifted to 15.03.2026 as per clause 4 of the Development Agreement dated 10.03.2023 and clause 3 of the Development Agreement dated 10.12.2021 after both the Society and Developer having agreed to the same in the interest of the members who have still not made the arrangement.

19. Mr. Nitin Madhani, Director of the Developer Company namely Parshwa Padmavati Projects Pvt. Ltd. is present before the Court today and he gives an undertaking to the Court that all rights and benefits as stated in the Development Agreement and PAAA regarding transit rent, corpus and all other benefits to each member will be at par with all members and no member of the Society shall be discriminated until their rehabilitation in the PAAA buildings constructed by the Developer.

20. Liberty to the parties to apply in case of difficulty.

21. Interim Application No.7659 of 2025 is allowed and disposed.

22. In view of allowing Interim Application No.7659 of 2025, pending In-Person Application (L) No.35224 of 2025 is accordingly disposed in view of the aforesaid order.

[MILIND N. JADHAV, J.]

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by AJAY
TRAMBAK
UGALMUGALE
Date: 2026.02.12
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