

MHPU020017262002



Received on : 02/03/2002
Registered on : 02/03/2002
Decided on : 31/10/2025
Duration : Yrs. Ms. Ds.
23 07 29

IN THE COURT OF 3rd JOINT CIVIL JUDGE SENIOR DIVISION,
AT PUNE.

[Presided over by Dr. D. U. Dongare]

Reg. Civil Suit No. 290/2002**Exhibit No. 60**

Shri. Dayal Singh Dhupar
Age : Adult, Occu. - Business,
President of GERA LANDMARK
CONDOMINIUM, A registered Association of
Apartments registered under Maharashtra
Apartments Ownership Act, 1970 bearing
registration No. 3437/93 having its office
at 22/B, Kalayani Nagar,
Pune 411014

..... Plaintiff

Vs.

- 1] Mr. C. T. Kripalani,
Age : Adult, Occu.- Profession,
R/at A/204, Gera Landmark,
Kalayani Nagar, Pune 411014
And
A-501, Mount View, Off Marol Maroshi
Road, Near Bhavani Nagar, Andheri (East)
Mumbai 400059
- 2] M/s K. P. G. Associates, A private Family Trust
Having its address at, 8/352, Boat Club Road,
Pune 411001 through its trustees :
- 3] Mr. Pritamdas Gera,
Age : Adult, Occu. - Business,
Having office at 8/352, Boat Club Road,
Pune 411001

... Defendants

4] Mr. Kumar P Gera,
Age : Adult, Occu. - Business.
R/at Having office at 8/352,
Boat Club Road,
Pune 411001

... Defendants

Suit for Recovery of Rs. 47,507/-

Shri. A. M. Dube - : Advocate for Plaintiff
Defendant No. 1 - : In person
Defendant No. 2 to 4 - : Without Written Statement.

: J U D G M E N T :

[Delivered on this 31st day of October, 2025]

Plaintiff filed the suit for recovery of Rs. 47,507/-
alongwith interest at the rate of Rs. 18% p.a. from the date of
filing of the suit till realization of the amount.

Facts of the plaintiff's case are summarized as follows :

2] Plaintiff is a President of registered Association of
Apartments known as Gera Landmark Condominium registered
under Maharashtra Apartments Ownership Act, 1970. The
defendant No. 2 is the promoter and developer of the said scheme.
Defendant No. 2 have entered into agreement to sale in favour of
various purchaser of tenements in the said scheme. Defendant No.
1 and his father late T. D. Kirplani had entered into agreement to
sale dated 02/09/1991 with defendant No. 2 for purchase of flat
No. A-204 admeasuring about 49.25 Sq. Mtr on the second floor in
A wing of the said scheme. Defendant No. 2 had handed over the
possession of the said flat No. A-204 to defendant No. 1 and his

father and have executed deed of confirmation dated 05/06/1993. The plaintiff is managing the common area and facilities of the said scheme since 1994. Defendant No. 1 and his father filed the R. C. S. No. 633/94 in the Court of Civil Judge Junior Division, Pune against defendant No. 2 and also against plaintiff challenging the formation of apartment condominium. The said suit was dismissed. Defendant No. 1 had preferred the appeal in the District Court bearing appeal No. 595/95. The said appeal was also dismissed. The defendant No. 1 also filed second appeal before the Hon'ble High Court, but he could not obtain any orders against defendant No. 2.

3] Plaintiff further stated that Shri. T. D. Kirplani father of defendant No. 1 expired and defendant No. 1 is occupying and enjoying his flat No. A-204. Defendant No. 1 is residing in the said scheme as purchaser and occupier of the said flat No. A-204. He is not following the rules and regulations and bye-laws of plaintiff association for the reasons best known to him. Defendant No. 1 is making payment of Rs. 150/- instead of Rs. 630/- p.m. to plaintiff association inspite of repeated requests and demands made by plaintiff association from time to time. As per plaintiff's account and record an amount of Rs. 39,921/- is still due and payable by defendant No. 1 being arrears of monthly maintenance charges as per bill No. 750 dated 01/04/2001. The plaintiff states that the association have sent bills and reminders to the defendant No. 1, but, he has failed and neglected to pay the said amount of Rs. 39,921/-.

4] Plaintiff further stated that as per the agreement dated 21/09/1991 executed between defendant No. 1 and 2, defendant No. 2 is lawfully entitled to demand and recover the amount of maintenance charges due and payable in respect of the said flat from the defendant No. 1. Plaintiff further stated that amount of maintenance charges due from defendant as per the bill No. 750 dated 01/04/2001 is of Rs. 39,921/-. The interest at the rate of 18% from 01/04/2001 till the date of filing of the suit is of Rs. 6,586/- and notice charges is of Rs. 1,000/-. Total due amount is of Rs. 47,507/-. Plaintiff further stated that defendant No. 1 to 4 are jointly and severally liable to pay the amount of Rs. 47,507/- together with interest at the rate of Rs. 18% p.a. from the date of filing of the suit.

5] Defendant No. 1 filed their written statement vide Exh.12.

The facts of the defendant No. 1's written statement are summarized as follows :

6] The defendants stated that plaintiff has no locus standi to file the present suit. Plaintiff has no cause of action to file the present suit. He has further stated that the plaintiff is not the lawful entity. The defendant No. 2 to 4 are the promoters of said Gera Landmark Condominium scheme. It is established under the Maharashtra Ownership Flats Act, 1963. The said plot on which the scheme has been developed was received under the provision of Section 21 of Urban and sealing Act, despite the property was developed and sold under the provisions of MOFA. The defendant No. 2 to 4 had no locus or authority to get the said property

registered under the MOFA. It is violative of the permission granted under Section 21 of the ULC Act.

7] The defendant further stated that the plaintiff is lawfully registered association and concern with the day to day maintenance of the said scheme. The defendant is not aware about the execution of deed of apartment. He has further stated that defendant No. 2 has not executed any deed of apartment in respect of flat A 204. He has further stated that he is not aware about any rules, regulations and bio-laws of plaintiffs association. He has denied the allegations made against him about he is not abiding the rules of plaintiff association. He has also not admit the monthly maintenance charges. He has stated that he is regularly paying the lawful amount of Rs. 150/- p.m. He has denied that the maintenance charges are Rs. 630/-. He has denied the demand of Rs. 39921/- and bill No. 750 dated 01/04/2001. He has further submitted that the plaint do not disclose any cause of action. The suit filed by the plaintiff is not maintainable. He further stated that the suit is bad for misjoinder of parties and misjoinder of cause of action. He has further submitted that suit be dismissed with costs.

8] Defendant No. 2 to 4 have not filed their written statement, therefore, the suit proceeded without written statement as per order passed below Exh. 1 on 11/08/2023.

9] I framed the issues vide Exh. 33. I reproduce said issues along with my findings thereon with reasons mentioned as under :

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1	Whether plaintiff proves that he is entitled to recover the amount of Rs. 630/- p.m. from defendant No. 1 ?	Yes.
2	Whether defendant No. 1 proves that he is liable to pay the maintenance of Rs. 150/- p.m. ?	Yes.
3	Whether plaintiff proves that he is entitled for recovery of Rs. 39,921/-?	Yes.
4	Whether suit is maintainable ?	Yes.
5	What order and decree ?	Suit is partly decreed with costs.

:: REASONS ::

10] Plaintiff in order to prove his case has examined Rajan Gangadhar Gupte, vide Exh. 44. He is Secretary of Gera Landmark Condominium. He has reproduced the contents of the plaint in verbatim. He has deposed that the maintenance amount of Rs. 39,921/- is due from the defendant No. 1. Despite repeated demand the defendant No. 1 has not paid the said amount. To corroborate his evidence plaintiff has relied on the resolution dated 11/08/2024 vide Exh. 47, copy of deed of declaration dated 06/12/1993, vide Exh. 48, copy of deed of amendment dated 15/05/2001, vide Exh. 49. Plaintiff has filed the copy of bill No. 750 dated 01/04/2001 of Rs. 39,921/- vide Exh. 50.

11] The defendant No. 1 is an advocate. He has cross examined the witness. During cross-examination he has brought

on record that the P. W. No. 1 is staying in the society since 2001. The witness could not differentiate the paragraphs which are based on the knowledge and which are based on the information and belief. The defendant No. 1 has given the suggestion that he is deposing false. Plaintiff has denied the said suggestion.

12] Plaintiff has closed his evidence by filing pursis vide Exh. 58.

13] The defendant No. 1 has not lead any evidence. He has not examined himself. He has filed the written argument vide Exh. 59 and also made the oral submission.

14] Ld. Adv. Shri. Dube for plaintiff has submitted that plaintiff has proved the bill Exh. 50. He has further submitted that there is no denial to the plaintiff's evidence. The defendant No 1 has also not denied that it was his liability to pay the maintenance charges. He has further submitted that the evidence given by the plaintiff is remain unchallenged. Defendant No. 1 is the occupier of the suit flat. Thus, it was his responsibility to pay the maintenance charges. He has not paid the maintenance charges, therefore, plaintiff filed this suit.

15] Ld. Adv. Shri. Kirplani, defendant No. 1 for himself has submitted that plaintiff is not the legal entity. He has further submitted that suit is not maintainable. The Suit is bad for mis-joinder of Parties. He has further submitted that plaintiff filed the affidavit in lieu of examination-in-chief vide Exh.44. It is not filed by the authorized person Dayalsing Dhupar. Rajan Gupte has no

authority to file the said affidavit. He has no power of attorney. Thus, he has submitted that the suit deserves to be dismissed.

16] Ld. Adv. Shri Kirplani has further submitted that Rajan Gupte had filed the affidavit in contravention of the provision of Order 19 of the C.P. C. He has not differentiated the paragraphs which based on his knowledge and which are based information & belief. He has further submitted that the Gera Landmark Condominium is violative to statutory provision of MOFA. Thus, the filing of suit is an abuse of process of law. Thus, he has further submitted that suit be dismissed with compensatory cost.

17] Ld. Adv. Shri. Bhalerao for defendant No. 2 to 4 has submitted that the suit is not maintainable against these defendants. He has further submitted that it is responsibility of defendant No. 1 to pay the maintenance charges of plaintiff. He has further submitted that the defendants had already sold the suit property to defendant No. 1. He has further submitted that suit be dismissed against defendant No. 2 to 4.

As To Issue No 1 to 3 :-

18] Plaintiff has claimed that he is entitle to recover the maintenance at the rate of Rs. 630/-p.m. from defendant No. 1 and there is a amount of Rs. 39,921/- is due from the defendant No 1. Plaintiff has examined the Secretary Rajan Gangadhar Gupte. Defendant during cross-examination has not denied the facts about the per month maintenance is of Rs. 630/-. The Plaintiff has also not denied the bill filed vide Exh. 50. It reveals from the Exh.50 that from April 2001 to September 2001 the maintenance charges

was of Rs. 530/- and reserve fund per month was of Rs. 100/-. It further referred the arrears of the bill as per bill No 650 was of Rs. 33,748/-. The plaintiff has also charged the interest on delayed payment. In all the plaintiffs had issued the bill of Rs. 39,921/-.

19] The defendant during cross examination of plaintiff has not ask any question on Exh-50. It is admitted fact that defendant No. 1 is residing in the plaintiff's scheme in flat No.A 204. It is not disputed that the plaintiff is an association. The defendant No. 1's contention that it is not the lawful entity. The defendant No. 1 has not entered into the witness box. The mere denial that plaintiff is not lawful legal entity is not sufficient to disprove the said fact. The defendant No.1 has filed the RCS No.633/1994 and challenged the formation of plaintiff entity. The said suit was dismissed. The first appeal as well as the second appeal was also dismissed. In such background, the mere denial of defendant No.1 about the status of plaintiff is not sufficient.

20] Plaintiff has proved the bill Exh.50. He has proved that the defendant No.1 is residing in flat No. A 204 & the plaintiff is managing the said condominium. The plaintiff has proved the fact that the bill executed vide Exh.50 for maintenance charges. The amount of Rs. 39,921/- is due to the plaintiff from defendant No. 1. Defendant No. 1 has not paid the said amount.

21] The defendant No. 1 has submitted that the proper maintenance amount is of Rs 150/-, the defendant No. 1 has not entered into the witness box. He has not lead the evidence about the maintenance as per his calculation. During cross examination

the defendant No. 1 has also not suggested to plaintiff that the calculations of maintenance charges are not Rs. 630/- and it has to be Rs. 150/-. Though, defendant No. 1 has pleaded he has not lead any evidence to prove the said fact. Thus, I answer issue No. 1 and 3 in the affirmative and issue No. 2 in the negative.

As to Issue No. 4 - :

22] Defendant No. 1 has pleaded that the plaintiff has no authority. The plaintiff is not the legal entity. There is no cause of action, therefore, the suit is not maintainable. The plaintiff has not examined any witness. During cross-examination of P. W. 1 plaintiff has not given the suggestion about the plaint does not disclose cause of action, maintainability of the suit. There is absolutely no evidence brought on record by defendant No. 1 which can corroborate his pleading. Thus, defendant No. 1 has not made out that the suit is not maintainable. Thus, I answer issue No. 4 in the negative.

As to Issue No. 5 - :

23] Considering the findings of issue No. 1 to 3 plaintiff has proved that he is entitled to recover the amount of Rs. 39,921/- as an arrears of maintenance. Plaintiff has not proved that there is agreed rate of interest was of Rs. 18 % between plaintiff and defendant No. 1. Thus, plaintiff is not entitled to recover the amount of maintenance at the rate of Rs. 18 % p.a. Plaintiff has also not proved the expenses of notice charges. Thus, plaintiff is entitled for recovery of Rs.39,921/-. Thus, I pass the following order :

:: ORDER ::

- 1] Suit is partly decreed with costs.
- 2] The defendant No. 1 shall pay the maintenance amount of Rs.39,921/- along with interest at the rate of Rs. 6% p.a. from the date of issuing the bill till its realization.
- 3] The suit stands dismissed against defendant No. 2 to 4.
- 4] Decree be drawn up accordingly.

Pune
Date : 31.10.2025

(Dr. D. U. Dongare)
3rd Jt. Civil Judge Senior Division
Pune

CERTIFICATE

“I affirm that the contents of this P.D.F. file Judgment/ order is same word for word as per original Judgment/ order.”

Name of the Court	:-	Shri. Dr. D. U. Dongare 3 rd Jt. C.J.S.D., Pune
Name of the Steno	:-	Sau. M. K. Chaudhary
Date of Judgment/ Order	:-	31/10/2025
Judgment/ Order Signed by P.O. on	:-	04/11/2025
Judgment/ order uploaded on:-		04/11/2025