



Filed on	:	20.12.2025
Registered on	:	22.12.2025
Decided on	:	10.04.2026
Duration	:	Y M D
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**CNR No.MHCA010002412025**

**Exh.No.9**

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,  
MUMBAI  
**(Before Sau. S.S. Sapatnekar, President)**

**APPEAL NO.51 OF 2025**

(Arising out of Order passed by Ld Judge, Co-operative Court No.2, Mumbai dated 03/11/2025 below application Exh.19 in Dispute No.79/2025)

1. Sulaiman Bhimani  
Age 60 years, Occ.: Business,  
Indian Inhabitant having address at-  
Flat No.B-707, 7<sup>th</sup> Floor, B Wing,
2. Neil A. Francis  
Age 46 years, Occ.: Business,  
Indian Inhabitant having address at-  
Flat No.A-604, 6<sup>th</sup> Floor, A Wing,
3. Sunita Taterao Pawar through POA holder  
Sainath Taterao Pawar  
Age 78 years, Occ.: Housewife,  
Indian Inhabitant having address at-  
Flat No.A-104, 1<sup>st</sup> Floor, A Wing,  
Nos.1 to 3 residing in- Vindhiachal  
Cooperative Housing Society Ltd., 22, Mount Mary Road, Bandra (W), Mumbai 400 050. ... Appellants  
(Orig. Disputants)

**VERSUS**

1. Vindhiachal Cooperative Housing Society Ltd.,  
Having its registered office at- Plot No.22,  
Mount Mary Road, Bandra (W),  
Mumbai 400 050.
2. Hasanally A Dossani – Chairman  
Age : Adult, Occ.: Non known  
Indian Inhabitant having address at-  
Flat No.B-606, 6<sup>th</sup> Floor, B Wing

3. Nasreen A Lakhani – Secretary  
Age : Adult, Occ.: Non known  
Indian Inhabitant having address at-  
Flat No.A-703, 7<sup>th</sup> Floor, A Wing
4. Mani K. Prakash – Treasurer  
Age : Adult, Occ.: Non known  
Indian Inhabitant having address at-  
Flat No.A-103, 1<sup>st</sup> Floor, A Wing
5. Mr. Glen Abraham - Managing committee  
member, Age- Adult, Occ.: Not known  
Indian Inhabitant having address at-  
Flat No.B-106, 1<sup>st</sup> Floor, B Wing
6. Deepak Tolani Managing committee member  
Age- Adult, Occ.: Not known  
Indian Inhabitant having address at-  
Flat No.B-508, 5<sup>th</sup> Floor, B Wing
7. Shagufta Kazi- Managing committee member  
Age- Adult, Occ.: Not known  
Indian Inhabitant having address at-  
Flat No.B-108, 1<sup>st</sup> Floor, B Wing
8. Melroy Valdeiro - Managing committee  
member, Age- Adult, Occ.: Not known  
Indian Inhabitant having address at-  
Flat No.B-307, 3<sup>rd</sup> Floor, B Wing
9. Walter Anil David - Managing committee  
member, Age- Adult, Occ.: Not known  
Indian Inhabitant having address at-  
Flat No.A-402, 4<sup>th</sup> Floor, A Wing  
Nos.2 to 9 residing in Vindhiachal Cooperative  
Housing Society Ltd., 22, Mount Mary Road,  
Bandra (W), Mumbai 400 050. ... Respondents  
(Orig. Opponents)

**Ms. Sharon Fernandez, Advocate for Appellants.**

**Mr. Sandeep Manubarwala, Advocate for Respondents.**

## **J U D G M E N T**

(10<sup>th</sup> April, 2026)

- 1) This appeal takes an exception to the order passed by Co-operative Court No.2 Mumbai dated 03/11/2025 passed below Exh.19 in dispute

No.79/2025, below application filed by opponent No.1 under Order VII Rule 11(d) of the code of civil procedure (hereinafter referred to as CPC) for rejection of the dispute, whereby the Ld Trial Judge has allowed the application and rejected the dispute under Order VII Rule 11(d) of CPC. The original disputants are the appellants and original opponents are the respondents. For the sake of convenience, the parties hereinafter referred to by their original status as disputants and opponents.

2) In brief the facts of the case are as follows :

The disputants Nos.1 to 3 are members of Vindhichal Co-operative Housing Society Ltd. and are occupiers of the flats as mentioned in the cause title. Opponent No.1 is a registered co-operative housing society registered under the provisions of Maharashtra co-operative societies act. Opponent No.2 is its chairman, opponent Nos.3 and 4 are its secretary and treasurer and opponent Nos.5 to 9 are managing committee members of the opponent No.1 society. Opponent No.1 sent an email dated 16/11/2024 attaching a notice thereunder dated 14/11/2024 calling for a special general body meeting to be held on 08/12/2024 at the society office as well as over the online platform Zoom to transact business given in the said notice. Along with email, it has also sent format of consent letter to be filled, signed and given by the individual member of the society for redevelopment of society. The disputants replied the said email and demanded a copy of feasibility study report, which was approved and duly completed as per resolution passed in

the special general body meeting held on 13/07/2023. He had also sought explanation from the society as under which provision of bylaws, the society was seeking consent for redevelopment from individual members without the feasibility report being made available to members. The disputants in the dispute have challenged various special general body meetings held by the society for starting the redevelopment of the society on the ground of lack of quorum and requisite majority. It is also sought the mandatory relief for directing the society to adhere the various guidelines given by the Government for redevelopment of the society.

3) During pendency of the said dispute, the opponent society through its chairman has filed an application under Order VII Rule 11(d) read with Section 151 of the CPC for the rejection of the dispute application filed by the disputants. It is submitted that the dispute along with the interim application filed by the disputants with malafide intention, ulterior motive without disclosing the true and correct facts and suppressing the material facts from the Court. The redevelopment activities of the opponent society undertaken in participation of almost all members and dispute arising from such redevelopment activities is not business touching u/s 91 of the Maharashtra Co-operative Societies Act (hereinafter referred as the MCS Act) as per the order passed by Hon'ble High Court in the Appeal bearing Lodging No.474 of 2012 between the parties Mohinder Kaur Kochar Vs. Mayfair Housing Private Limited. It is submitted that the disputes arising

from such redevelopment activities of the society are not touching the business of the society. The opponent No.1 has every right to raise the said issue at any stage of the proceeding.

4) The opponent No.1 society in consonance with the provisions of the MCS act, MCS rules, byelaws and Government Circulars has adopted the redevelopment process. The general body of the society is the supreme authority and has all powers and authority to take decisions and adopt resolutions as per the general consensus, majority decisions and wisdom of general body. The disputants being members of the society have every right and authority to participate in redevelopment activities and process adopted by the society. They are also at liberty to take their stand in the said general body meetings. The disputants are free to challenge the same in the appropriate Court of law. The disputants have filed the dispute with the presumption that some wrong decisions are going to be passed and seeking relief of restraining order to be passed to such meetings. The application filed by the disputants will curtail the basic and democratic rights of the opponent society and all other members. The dispute is not falling within the purview of section 91 of the MCS Act. In the present case, the process of the activities of redevelopment of the society does not constitute the business of society within the meaning of Section 91 of MCS act. The redevelopment of the society is not the business of the society. Therefore, Section 91 is not attracted and dispute is liable to be dismissed. The whole dispute is barred by Section

91 of the MCS act. The redevelopment of the property may be necessitated in view of the building being in dilapidated condition or in view of the passage of time. The redevelopment would, thus, be a requirement and/or necessity and cannot be termed as business of the society. On these grounds the opponent No.1 society has prayed to reject the dispute under Order VII Rule 11 (d) of the CPC.

5) The disputants filed reply at Exh.21 and resisted the application. It is submitted that the application filed by opponent society is filed only to delay the trial. Any challenge based on Order VII Rule 11 must be confined to the plaint itself. The application is nothing but abuse of process of law and is liable to be dismissed. The application filed by the disputant is to challenge and set aside legal resolutions which were passed by the society in its illegal special general body meetings held on 08/12/2024 and 05/02/2025, since the resolutions passed in the said meetings are void ab-initio. It is denied that with the consent of majority the redevelopment process has been started by the society. The case law referred to by the opponents is a dispute between a member of the co-operative housing society and the developer appointed by the society and as such the precedent does not apply in the instant case since it involves the members of the society and the society itself. It is denied that the dispute is not maintainable u/s 91 of the MCS Act. The society has not adopted the redevelopment process in consonance with the provisions of the MCS act, MCS rules and circulars issued by the Government. By placing

reliance in the case of Venus Co-operative Housing Society and Anr., it is submitted that the supremacy of the general body cannot be disputed, even the most supreme body must act reasonably. It must pass resolutions grounded in relevant facts and circumstances, resolutions cannot be arbitrary or irrational. The disputants being members of the society are not allowed to participate in the redevelopment activities and process as adopted by the society. The society had conducted the meetings in the arbitrary and autocratic manner by suppressing the voice of the descending member and threatening any member who raises questions on the decisions of the managing committee. The society has misinterpreted the Section 91 of MCS act.

6) In para No.12 of the reply, the disputants have reproduced Section 91 of the MCS act and submitted that Section 91 applies to disputes between a member and the society or society and member as in the present case. The building of the society is not in a dilapidated condition as the major repairs of the building was done only 2 to 3 years back. The approval for conducting structural audit was approved in the special general body meeting which took place in July 2023 but its minutes were not provided to the members till date. The actual reason for the society to undertake the redevelopment process in such a tearing hurry is that the society has been inept in getting the conveyance for the past more than 44 years and society standing on the land leased by the Collector of Mumbai. The society intends to shift its

responsibilities on the developer to get both activities done. On these grounds disputants have prayed to dismiss the application.

7) The Ld Trial Court after hearing the matter on merits, allowed the said application and rejected the dispute of the disputants by her order dated 03/11/2025 and said order is impugned in the present appeal.

8) On rival pleadings of the parties, following points arise for my consideration and my findings with reasons are as follows :-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether the dispute is not maintainable under Section 91 of the MCS Act and as such needs to be rejected under Order VII rule 11(d) of CPC ?	... In the Negative
2.	Whether interference is called for in the order of Ld Trial Judge ?	... In the Affirmative
3.	What order ?	... As per final order

### **REASONS**

9) Heard the Ld Advocate for disputants and opponent No.1 society.

10) The Ld Advocate for disputants submitted that the application filed by opponent under Order VII Rule 11 of the CPC is allowed and dispute is rejected. Development agreement with the developer is not yet executed. Due to procedural lapses the resolutions passed in the special general body meetings whereby the redevelopment process started are challenged in the dispute. Under Section 91 of the MCS act, management and procedural aspects in passing the resolution can be challenged in the Co-operative Court.

She submitted that the reliance placed by the Ld Trial Court on the various Judgements in the impugned order is misplaced and the said Judgements are not applicable to the facts of the present case in hand. According to her, passing of various resolutions whereby the redevelopment process has been taken up, can be challenged u/s 91 of MCS act. In the present case, no developer is yet appointed and no third party interest has been created in the property of the society. The dispute squarely falls u/s 91 (1) (a) and (d) of the MCS act. So as to buttress her arguments, the Ld Advocate for disputants placed reliance in the case between the Bank of India staff Panchsheel Co-operative Housing Society Ltd Vs. Jitendra Kumar Jani & Ors. in Writ Petition No.8889/2024. She prayed to allow the appeal and to set aside the order of Ld Trial Judge for rejecting the dispute. She also prayed to restore the dispute and remand back the same to Trial Court for its disposal according to law. She has also referred the model bylaws.

11) Per contra the Ld Advocate for opponents submitted that the Ld Trial Court has rightly passed the order observing that the dispute is not maintainable u/s 91 of the MCS Act by placing reliance on the Judgements of Mohinder Kaur Kochar and Margret Almeida. He further submitted that the process of redevelopment started by the society cannot be challenged in the Co-operative Court and the society has selected in all 7 developers and the process of shortlisting the same has been going on. He prayed to dismiss the appeal thereby confirming the order of Trial Court.

**As to Point No.1 & 2 :**

12) The main contention raised by the opponent society is that the dispute is not maintainable u/s 91 of the MCS Act as the disputant has challenged the redevelopment process started by the society and redevelopment is not the business of the society. The disputes, so as to fall within the purview of Section 91 of the MCS act, need to satisfy two tests. The dispute must be touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of the society. The parties to the dispute must be a society, its officers, members, past members or a person/persons claiming through such past or present members. Hence, in this case, it is necessary to see whether the present dispute in hand satisfies these two conditions. It is well settled rule of law that while considering the application under Order VII Rule 11 of the Code of Civil Procedure, Court requires to look into averments of plaint only. The defence or the contentions in the written statement and the documents of the opponents has no place to see. Hence, it is necessary to consider the averments of the plaint or dispute only. Admittedly, the disputants have challenged the resolutions passed by the society on the ground of lack of quorum and the requisite majority. The dispute application under prayers read as a whole, it becomes evident that the disputants have challenged the manner in which the general body meetings were conducted and the resolutions passed therein. The dispute has been raised by the members of the society against the society itself. The opponent

society being a co-operative housing society, to pass various resolutions for conducting its day-to-day affairs is its business and the disputants have challenged the said resolutions. It means that the dispute is touching the business of the society. Such type of dispute squarely falls within the ambit of Section 91 of the MCS Act. Thus, the pleadings of the disputants read as a whole reveals that it satisfies the two conditions referred above. Admittedly, in this case, the development agreement is not yet executed. The disputants nowhere have challenged the said development agreement. It is also seen that the society has merely selected 7 developers and their shortlisting is going on.

13) The Ld Advocate for disputants has rightly relied upon the case of Hon'ble Parent High Court in Writ Petition No.8889/2024 between the Bank of India Staff Panchsheel Co-operative Housing Society Ltd. Vs. Jitendrakumar Jani & Ors. In the said case law, Hon'ble His Lordship has set out the scope of Court's power under Order VII Rule 11 of the CPC. In Para No.13, it is observed that-

*“13. At the outset, the legal position governing Order VII Rule 11 must be stated with clarity. While considering an application under this provision, the Court must confine itself strictly to the averments in the dispute application and the reliefs claimed therein. Nothing beyond the dispute application can be looked into. No defence. No reply. No documents produced by the opponent. No disputed facts. The Court must assume the pleadings of the disputant to be true and test only one thing. Whether on those pleadings, the dispute is barred by any law or does not disclose a cause of action. This limitation on the Court's power is a rule of law. Any adjudication*

*which travels beyond the dispute application converts a summary scrutiny into a full trial. Order VII Rule 11 does not permit such an exercise.”*

In Para No.20, it is further observed by Hon’ble His Lordship that –

*“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.”*

The aforesaid precedent perfectly applies to the facts of the case in hand. Whether redevelopment forms part of the business of a society is not a pure question of law. In this case, from the order of the Ld Trial Judge it is seen that byelaws were not produced before Trial Court. So as to consider the object of the society, it is necessary to see the byelaws. Without examining the byelaws, it is impossible to observe that redevelopment is not the object of the society. The Ld Trial Judge has wrongly placed reliance in the case of Mohinder Kaur Kochar and Margret Almeida without examining the object of the society from the byelaws.

14) As already pointed out, the pleadings or averments in the dispute as a whole clearly reveals that dispute is falling u/s 91 of the MCS Act. The Ld Trial Judge has lost the sight of all these facts and the precedent of the Hon'ble Parent High Court laid down in the case (cited supra). Hence, considering the facts and the position of law, I have hesitation to answer Point No.1 in the negative.

15) The order of the Trial Judge is suffering from illegalities and the Trial Court has not considered the pleadings of the disputants as a whole. Whether disputants would get the reliefs as prayed would be the question of merits. But at this stage, under Order VII Rule 11 of the CPC, the dispute cannot be thrown out as not maintainable. Hence, the interference is called for in the Trial Court's judgment & order. Hence, I answer said Point in the affirmative.

16) As a result, I proceed to pass the following order :-

**ORDER**

1. Appeal is allowed with costs.
2. The order passed by the Ld Co-operative Court No.2, Mumbai dated 03/11/2025 below application Exh.19 filed by opponent No.1 under Order VII Rule 11 (d) of the Code of Civil Procedure in Dispute No.79/2025 is hereby set aside and following order is substituted in its place :
  - i. Application Exh.19 is hereby rejected.
  - ii. The Dispute No.79/2025 is hereby restored to the file of Ld Co-operative Court No.2, Mumbai at its original stage.
  - iii. The Ld Co-operative Court No.2, Mumbai is directly to prepare the award accordingly.
3. The parties are directed to appear before the Ld Trial Judge on 30/04/2026.
4. R & P be sent to the Ld Trial Court immediately.

Mumbai  
10<sup>th</sup> April, 2026

**(Sau. S.S. Sapatnekar)**  
President,  
Mh.State Co-operative Appellate Court,  
Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER.”

10.04.2026  
UPLOAD DATE AND TIME

(D.D. Desai)  
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	Sau. S.S. Sapatnekar (C.R. No.1) President
Date of pronouncement of Judgment/Order	10.04.2026
Order signed by P.O. on	10.04.2026
Order uploaded on	10.04.2026