

**MAHARASHTRA STATE CO-OP APPELLATE COURT MUMBAI,
BENCH AT NAGPUR**

(Before Shri. A. S. Wanve, I/c. Member)

Appeal No.75 of 2025.

Ramkrushna s/o Shrawan Sakare (Died)

Through Lrs. & others.

...Appellants

Versus

The Panchsheel Gruha Nirman Sahakri

Sanstha Limited, Nagpur & others

...Respondents

ORDER BELOW EXHIBIT 5

(Detected and pronounced on 20th June 2025)

1. This is an application filed by the appellants for stay to the execution and implementation of Judgment and Award passed by the Ld. Judge Co-operative Court Nagpur in dispute No.910/1992 dated 19/11/2024, till disposal of the appeal. On the ground most specifically mentioned in application Exh.5 mainly on the ground that the impugned judgment and award is not legal. The dispute cannot be adjudicated by the co-operative Court and is not maintainable under section 91 of M.C.S. Act,1960. It is further submitted that, the dispute filed by the respondent No.2 is based on the pleadings of the encroachment and a relief of ejectment, damages, declaration etc. is alleged over the land. The issues relating to encroachment cannot be decided by the Co-operative Court under the provisions of the Maharashtra Co-operative Societies Act, especially under section 91 of the said act. Hence, the judgment and award directing the applicants to deliver the possession of House No.41 to the respondent No.2 is without jurisdiction.



2. That this court in appeal No.63/2004 filed by the applicant has remanded the matter to co-operative court, Nagpur by its judgment and order dated 05/09/2007 with a specific observation of framing certain issues. It is pertinent to state that only few of the issues were framed and a specific issue about the title was not framed.

3. Dispute filed by the respondent No.2 is barred by limitation as the cause of action is alleged to be of the year 1976 and the initial suit filed before the Ld. Civil Judge, Senior Division, Nagpur was on 04/03/1987 i.e. 11 years after the alleged cause of action. Hence, the judgment and award dated 19/11/2024 is liable to be quashed and set aside being filed beyond limitation period. The period of limitation for filing a dispute is 6 years and the respondent No.2 has not explained any delay or has filed any application for condonation of delay thereby justifying the inordinate delay in filing the dispute. The observation of the Ld. Co-operative Court that section 14 of the Limitation Act would be applicable is incorrect as for taking advantage of section 14 of the Limitation Act, there has to be the condonation of delay application along with application under section 14 of the Limitation Act.

4. Ld. Civil Court while allowing the application filed by the respondent No.2 for return of the plaint on 04/11/1992 has specifically made an order that the risk of limitation is not covered and thus the law of limitation would be applicable. Hence, when the dispute has to be considered from the date when it was filed before the co-operative court, Nagpur i.e. 04/11/1992 and not 04/03/1987. It is submitted that, there is no application filed by the respondent No.2 for condoning the delay from 1976 till 1992, hence the dispute is barred by limitation.

5. The suit property i.e. House No.41 was delivered to the applicants on 27/01/1971 and from 1971 till today, the applicant is in settled possession. The Ld. Trial Court, Nagpur has wrongly held that the respondent No.2 was



given possession in the year 1971. It is further submitted that, the Ld. Co-operative Court, Nagpur has not considering the documents filed on record by the applicants and has ignored the possession letter dated 27/01/1971 executed in favour of the applicant. The Ld. Trial Court, Nagpur has further failed to consider the evidence of expert witness who has deposed that the xerox of possession letter is same as original. The findings of the Ld. Trial Court holding that the evidence of the expert witness is not admissible, is contrary to law and is liable to be quashed and set aside.

6. Respondent No.2 failed to lead any positive evidence by which it could be proved that the applicant has forcibly dispossessed the respondent No.2 from plot No.41 on or about 23/04/1976. The respondent No.1 and 2 are hand in glove with each other and are trying to dispossess the applicant from house No.41.

7. Respondent No.2 has filed reply at Exh.22 and objected this application on the grounds most specifically mentioned in reply at Exh.22. Mainly on the ground that, on the basis of the pleadings, documents and evidence both oral and documentary on record Ld. Trial court has rightly allowed the dispute. It is pertinent to note that, the civil suit which had been filed by the original disputant in civil court bearing R.C.S. No.446/1987 against the original opponent No.2 i.e. appellant (since deceased), he raised the objection regarding the jurisdiction of civil court of the said suit therefore the respondent No.2 since deceased Manikrao Tarwatkar had no other alternative but to file an application for return the plaint for presentation to proper forum i.e. the Co-operative Court, Nagpur, accordingly the plaint has been returned by Civil Court for presentation to the Co-operative Court.

8. So as to deprive the respondent No.2 from his legitimate claim of the tenement No.41 which had been already allotted to him by the respondent No.1 society, however, the appellant during the pendency of legal



proceeding against him, got the so called sale deed, which is sham and bogus, executed and registered on 02/01/1992 from one Mr. Ramdas Bodele, posing himself as a secretary of the respondent No.1 society. The said Mr. Bodele had no power or authority in any manner to that effect, but, executed and registered the false sale deed in collusion with each other (the original defendant /opponent No.2/ appellant deceased Ramkrushna Sakhare and Mr. Ramdas Bodele since deceased) during pendency of the said suit.

9. After taking into consideration, all the facts, evidence both documentary and oral, the Ld. Co-operative court has passed the said award / judgment in the said dispute and not any error has been committed in deciding the said dispute by the Ld. co-operative court. However, in the present appeal, the appellant has falsely raised the grounds for tenability of the dispute the appellant cannot be permitted to approbate and reprobate, once the objection raised on behalf of the original defendant i.e. appellant / opponent No.2 that, the civil court has no jurisdiction in suit which had been instituted by the respondent No.2 / plaintiff /disputant and when the disputant instituted the dispute before the co-operative court, it was / is not open for the appellant / original defendant / opponent No.2, thereafter, to take an objection, that, the dispute would also be barred in view of section 91 of the Maharashtra Co-operative Societies Act. If the submission on behalf of the appellant is accepted, in that case, the original plaintiff / disputant / respondent No.2 would be remediless. Hence, the allegations made by the appellant herein to that effect are not tenable. Appellant cannot be permitted to take just a contrary stand taken before the Civil Court in the suit which had been filed by the respondent No.2. It is pertinent to note that, during pendency of the dispute before the co-operative court, so also, during pendency of the present appeal before this Hon'ble court the opponent / respondent No.1 society has recovered the land revenue tax



from the respondent No.2 disputant on 04/06/2011 amounting to Rs.1,055/- and on 02/02/2025 amounting to Rs.8,866/- respectively, payable to the Government in respect of tenement No.41 allotted to the respondent No.2 / disputant.

10. It is further submitted that, so as to drag/ delay the legitimate claim over the tenement which has been allotted to the respondent No.2 by the respondent No.1 society, the appellant has filed the present appeal.

11. Respondent No.1 society failed to file reply.

12. Heard Ld. Advocate Shri. P. K. Mohta for appellants.

13. Heard Ld. Advocate Shri. Y. N. Thengre for respondent No.2.

14. Heard Ld. Advocate Smt. L. B. Gawande for Respondent No.1 society.

15. Ld. Trial Court by impugned judgment and award has granted the reliefs which reads as-

1. The dispute is allowed with cost.

2. The opponent No.2 is directed to deliver possession of house No.41 situated in opponent No.1 society at Ambedkar colony, Kamptee road, Nagpur to disputant within two months from date of order.

3. The sale deed dated 02/01/1992 executed by opponent No.1 in favour of opponent No.2 is not binding on disputant. It is declared as illegal.

4. The opponent No.1 society is directed to executed sale deed of house No.41 in favour of disputant within two months from delivery of possession by opponent No.2.

5. The disputant is entitled to mesne profit from date of dispossession i.e. 23/04/1976 till delivery of possession from opponent No.2. The inquiry be held to determine mesne profit as per Order-20 Rule 12 of Code of Civil Procedure.



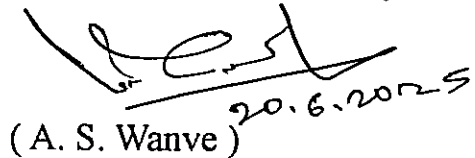
16. Considering the operative part of impugned judgment and award it is seen that if the award is executed during the pendency of this appeal then appeal becomes infructuous
17. Ld. Advocate respondent No.2 submitted that they have not yet started execution of impugned award and if the hearing of appeal is expedited then they have no objection to grant stay to the impugned judgment and award. Accordingly I proceeded to pass following order

ORDER

1. Application for stayed Exh.5 is allowed.
2. Execution and implementation of judgment and award passed by Ld. Judge Co-operative Court, Nagpur dated 19/11/2024 in dispute No.910/1992 is stayed till disposal of this appeal i.e. Appeal No.75/2024.
3. Hearing of Appeal No. 75/2024 is expedited, parties are directed to cooperate for expedite disposal of appeal.
4. No order as to cost.

Place : Nagpur.

Date :- 20th June 2025.



20.6.2025

(A. S. Wanve)
I/C. Member

Maharashtra State Cooperative
Appellate Court Mumbai
Bench Nagpur.