

CNR No. MHCO10003412024

Dispute No. 326/2024
Suren D. Ayre & another
Vs.
Sukumar CHSL

ORDER BELOW EXH. 9:

1) Present application is filed by opponent under Order VII Rule 11 of the Code of Civil Procedure, 1908. (C.P.C) for rejection of dispute.

2) Case of opponent in brief is as follows:

Present dispute is barred by law. Subject matter of present dispute is arising out of redevelopment of society. The SGBM dated 30th June 2024 was arising out of redevelopment of society. The subject matter of present dispute does not fall in the ambit of section 91 of the MCS act. Hence, dispute is expressly barred. Therefore, present application be allowed and plaint to be returned or rejected.

3) Case of disputants in brief is as follows:

Disputants denied contentions of present application by filing their reply vide **exh. 11/12**. Disputant are members of opponent society. Therefore, parties to present dispute are as defined under section 91 of the MCS Act. Present dispute is filed to challenge notice dated 21st June 2024 and resolution nos. 2 passed in the SGBM dated 30th June 2024. In the said meeting,

directive no. 17 of the GR dated 4th July 2019 was violated. The said subject matter covers dispute within the term of 'business and management' of the society. The said notice and resolution of SGBM dated 30th June 2024 pertain to appointment of developer.

4) Further, notice dated 21st June 2024 is challenged on the ground that, society violated provisions of section 76(1) of the MCS Act. In the present dispute, resolutions of society are challenged. Disputants have not challenged redevelopment activities nor any relief is claimed against developer. The bye-law no.174 deals with redevelopment of building of societies. Likewise, in the present dispute, as mentioned above resolutions of society are challenged. Therefore, this court has jurisdiction to decide the present dispute. Hence, present application be rejected with costs.

5) Heard argument of learned advocate Smt. Kulkarni for opponent/society and learned advocate Smt. Sonawane for disputants. After perusal of application, following points arose for my determination. Accordingly, I have given my findings of the same. They are as follows:

S.N.	POINTS FOR DETERMINATION	FINDINGS
1	Whether the present dispute is maintainable under Section 91 of the MCS Act?	In the affirmative.

2	Whether the dispute is barred by law and thereby liable to be rejected under Order VII Rule 11 of C.P.C.?	In the negative.
3	What order?	As per final order.

REASONS:**6) AS TO POINT NOS. 1 TO 3:**

It is the case of opponent-society that, present dispute is not maintainable under Section 91 of the MCS Act as subject matter of present dispute is not within the purview of said section. Further, subject matter of present dispute relates to redevelopment of society. Therefore, this court does not have jurisdiction to decide present dispute.

7) As present application is filed under Order VII Rule 11 of the C.P.C. Therefore, only plaint/dispute application must be taken into consideration. I perused the plaint/dispute. It is prayed by disputants that, the notice dated 21st June 2024 was to conduct SGB on 30th June 2024, which was signed by the secretary. Hence society has violated section 76(1) of the MCS act. Wherein, the resolution dated 30th June 2024 was passed in violation of directive nos. 17 of GR dated 4th July 2019. There was no requisite quorum for the said SGBM when developer was selected.

8) Further, it is submitted that the notice dated 21st June 2024 was given to start meeting at 10:30 AM and the same is mentioned in the minutes dated 30th of June 2024. As per the minutes, meeting started and continued at 10:30 AM without any further adjournment. Further, society failed to issue notice prior to 14 days before conducting the SGBM.

9) The disputants have prayed to declare that notice dated 21st June 2024 and resolution passed on 30th of June 2024 are illegal and void. Therefore, they are not binding on disputants. Further, it is also prayed to cancel aforementioned resolution nos.2 of 30th June 2024 and to restrain society or any person on its behalf from implementing the same.

10) The learned advocate for opponent-society argued that resolution dated 30th June 2024 is related to redevelopment of the society. Therefore, this court does not have jurisdiction to decide a dispute having a subject matter of redevelopment. Therefore, present application be allowed and dispute be rejected.

11) Per contra, learned advocate for disputants argued that in the present dispute, resolution and notice of society are challenged. They are challenged on the ground of non-compliance of provisions of law. Hence, this court has jurisdiction to decide the present dispute. Therefore, present application is liable to be rejected.

12) It is to be noted that, the society also mentioned citations in its written argument vide exh.13. However, society neither mentioned names of parties nor provided copies of the same, for perusal of disputants and the court. Hence, said citations could be taken into consideration.

13) Before proceeding any further, it is necessary to take into consideration provisions of Order VII Rule 11 of the C.P.C. It is as follows-

Order VII Rule 11- Rejection of plaint:

The plaint shall be rejected on the following cases:

- a.** *Where it does not disclose a cause of action;*
- b.** *Where the relief claimed is undervalued and the plaintiff, on being required by the court to so correct the valuation within a time to be fixed by the court, fails to do so;*
- c.** *Where the relief claimed is properly valued, but the plaint is written upon proper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*
- d.** *Where the suit appears from the statement in the plaint to be barred by any law;*
- e.** *Where it is not filed in duplicate;*
- f.** *Where the plaintiff fails to comply with the provisions of rule 9:*

14) As per aforementioned contentions of the opponent, present dispute does not fall under section 91 of the MCS Act. Hence, as per Order VII Rule 11 of the CPC, present dispute is barred by law. Therefore, to decide the same, section 91 of the MCS Act must be taken into consideration.

15) Scheme of section 91 of the MCS Act confers exclusive jurisdiction on the Co-operative Courts, if dispute satisfies following two requirements as per its provisions. They are- a) **subject matter of the dispute** and b) **parties to the dispute**. As mentioned above, disputants have submitted that they are members of the opponent- society. Therefore, present dispute is between parties as enumerated by provisions of Section 91 of the MCS Act.

16) Proceeding further. Disputants have challenged aforementioned resolution and notice of the society. It is the contention of opponent- society that subject matter of present dispute is related to redevelopment of the society. From, perusal of dispute it can be seen that resolutions related to redevelopment has been challenged by the disputants. Further, it is also mentioned in the same that, developer for redevelopment of society has been selected.

17) On the other hand, aforementioned notice and resolution have also been challenged on the ground of non-compliance of

issuance of notice, before the prescribed period as per provisions of the MCS Act. Hence, even though developer has been selected by the society and resolution related to said appointment has been challenged in the present dispute.

18) But on the other hand, as mentioned above, notice and resolution subsequently passed have been challenged on the ground that, society has not followed statutory provisions before conducting the said meeting. Therefore, validity/authenticity of such resolution can be decided by Co-operative Court. Hence, in my opinion, present dispute does meet requirements of Section 91 of the MCS Act. Accordingly, **I answer point nos. 1 in the affirmative.**

19) To conclude, when in the light of aforementioned grounds and scheme of section 91 of MCS Act, exclusive jurisdiction of Co-operative Court is considered. In that case, subject matter of present dispute does fall in the ambit of section 91 of the MCS Act, with regards to non-compliance of statutory provisions of issuance of notice. Therefore, this court can decide present dispute. Hence, considering all these factors, **I answer point nos. 2 in the negative.** Accordingly, in consonance with the same, for point nos.3, I proceed to pass following order-

ORDER:

1. Application is rejected.
2. Both parties to bear their own costs.

Place: Mumbai
Date: 19/07/2025

Sd/-
(Prachi N. Gosavi)
Judge, Co-operative Court No.4,
Mumbai.