

CNR NO. MHCO010005352023

Dispute No. 465/2023
Suren D. Ayre & another
Vs.
Sukumar CHSL

ORDER BELOW EXH. 20:

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 12th June 2022 was arising out of redevelopment of society. 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. 21**. Disputants 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 resolution nos. 1 and 2 passed in the SGBM dated 12th June 2022. The resolution nos.1 though pertains to sharing

benefit of redevelopment, it touches business and management of the society. The said subject matter covers dispute within the term of 'business and management' of the society.

4) Disputants have not challenged redevelopment activities nor any relief is claimed against developer. The bye-law no.174 deals with redevelopment of building of society. Likewise, in the present dispute, as mentioned above resolution of society is 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 mentioned in the dispute that, society has separated books of accounts of its two plots by passing aforementioned resolution dated 12th June 2022. However, the said resolution was passed without following provisions of section 17 of the MCS Act. Hence, disputants have challenged aforementioned resolution on the ground of illegality, along with other prayers.

8) The learned advocate for opponent-society argued that resolution dated 12th June 2022 is related to redevelopment of the society. Therefore, this court does not have jurisdiction to decide a dispute having a subject matter of redevelopment. Hence, present application be allowed and dispute be rejected.

9) Per contra, learned advocate for disputants argued that in the present dispute, resolution of society is 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.

10) It is to be noted that, the society also mentioned citations in its written argument vide exh.22. 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.

11) Further, society has also relied on decisions given by the hon'ble Apex Courts in the cases of:

- a) **Yashwant Chandrakant Patil Vs Mukund Nethaji Shelke, 2024(4) ALL MR 421,**
- b) **Anil Bhanudas Bhamikar & another Vs Gurudas Bhamikar, 2024(4) ALL MR 409, and**
- c) **Asma Lateef & another Vs Shabir Ahmad & others, 2024 ALL SCR 583.**

12) I perused judgement given in the case of **Yashwant Chandrakant Patil Vs Mukund Nethaji Shelke**. But facts of present case differ from case cited supra. Nonetheless, as held in the aforementioned judgment, issue of jurisdiction is being discussed in the present application.

13) Wherein, facts of case of **Anil Bhanudas Bhamikar & another Vs Gurudas Bhamikar** differ from present case. The said case was filed under the Representation of People Act and present case is filed as per the provisions of MCS Act. Lastly, the case of **Asma Lateef & another Vs Shabir Ahmad & others** deals with objection raised to an execution proceeding filed under section 47 of the Code of Civil Procedure, 1908. Hence, aforementioned both the decisions cannot be taken into consideration at this stage, at least.

14) 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:*

15) As per aforementioned contentions of the society, 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.

16) 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.

17) Proceeding further. Disputants have challenged aforementioned resolution 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, resolution related to redevelopment has been challenged by the disputants. However, aforementioned resolution has been challenged on the ground of violation of section 17 of the MCS Act.

18) Hence, even though resolution related to redevelopment has been challenged in the present dispute. But as mentioned above, resolution passed has been challenged on the ground that, society has not followed statutory provisions of law while passing the same. 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 law. 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.** No order as to costs.

Place: Mumbai
Date: 07/11/2025

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