

Order Below Exh. 11 in CC/I/479/2023
(Sunil Maruti Parab Vs. Vidyadhar Dalvi)

1) Perused the interim application filed by the Disputant and say filed by the opponents. Disputant filed written arguments below Exh. 23 and below exh.27. Opponent No.1,2 and 5 filed written arguments below Exh. 30. Both parties also orally argued before me at length.

2) In view of rival pleadings, I have framed following points, and I have recorded my findings thereon for the reasons stated below.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the disputant have prima facie case?	In the Negative
2)	Whether balance of convenience is in favor of Disputant?	In the Negative
3)	Whether Disputant will suffer irreparable loss if interim injunction is not granted in her favor?	In the Negative
4)	What Order?	Application is rejected.

REASONS

As to Point No.1 to 3

1) Before going into merits of the case it is necessary to note facts of case in brief. As per disputant the dispute is filed with regard to membership of disputant. As per disputant, he is the legal representative as well as legal heir of Late Mrs. Janaki Laxman Parab resident of Flat No.302 (hereinafter will be referred as '**dispute flat**') of

opponent No.5 society. The said flat is ancestral flat. Disputant is grandson of Late Mrs. Janaki Laxman Parab. Disputant's father Late Mr. Maruti Laxman Parab was the eldest son of the family. Opponent Nos.1 and 2 are the Secretary and Treasurer of opponent No.5 society. Opponent Nos.3 and 4 are the Co-operative Banks which holds a current account of opponent No.5 society. It is the contention of disputant that, he is an associate member of opponent No.5 society and elected as Chairman of opponent No.5 society, in November 2021.

2) Disputant further submitted that there is dispute between two legal heirs with respect to extent of share in the dispute flat. However, opponent Nos.1 and 2 in illegal manner completely stopped communication with disputant, since May 2023. In the meantime, disputant sent numerous communications with opponent Nos.1 and 2 stating that their action is illegal. Thereafter, opponent Nos.1 and 2 in their communications referred withdrawal of general power of attorney by Mrs. Devyani Harishchandra Raut and the legal opinion given by advocate Shri. Mangesh Nalavade to bar the disputant from exercising his powers and functions. Thereafter, without communications and intimations, opponent Nos.1 and 2 started operating bank accounts held with opponent Nos.3 and 4. And on another hand, on 20/08/2023, opponent no.2 along with disputant signed letter together to provide information to the disputant which accepts Chairmanship of disputant. Disputant also raised complaints with Nodal Officers of opponent No.3 for not adopting bye-laws of the society. However, opponent No.1 and 2 with their ill and malafide intentions by letter dated 18/10/2023 delivered on 27/10/2023 informed the disputant that in AGM dtd.24/09/2023 which was never served to the disputant, removed the disputant from acting as associate member and Chairman of opponent No.5 society. Thereafter, Mr. Jitesh Kotian was unanimously accepted as Chairman of opponent No.5 society.

3) Disputant further submitted that without issuing notice to the disputant his associate membership was removed, and he was removed from the post of Chairmanship. As per disputant the opponent Nos,1 and 2 illegally obstructed, stopped and locked the disputant from performing him as Chairman. The opponent Nos. 3 and 4 acted in collusion with opponent Nos.1 and 2 and prevented disputant from acting as Chairman. Disputant found several discrepancies in the conveyance deed executed by the opponent No.1 for which disputant raised separate complaint before District Deputy Registrar. The opponents in their capacity illegally issued membership to random persons. Disputant also found illegal transactions conducted in the accounts of opponent No.5 society. Therefore, to prevent the disputant, the opponent Nos.1, 2 and 5 by illegal act restrained the disputant and passed illegal resolution dated 24/09/2023. Hence, disputant filed present dispute and filed this interim application.

3) Opponent no. 1 and 2 adopted the reply filed by opponent no. 5. Opponent no. 3 adopted the contents of WS as say to the interim application by Pursis below Exh. 29 and filed say that the opponent No.3 has been unnecessarily dragged in the present dispute. Opponent No.3 is a banker to opponent No.5 society. Disputant claims to be Chairman of opponent No.5 society. On 24.08.2023, disputant wrote a letter to opponent No.3 bank on letter head of opponent No.5 society. However, the said letter was un-signed and also sent e-mail to opponent No.3 demanding statement of account and details of F.D. on his personal mobile which is denied by opponent No.3. Opponent No.5 society informed to opponent no.3 bank about removal of disputant from the post of Chairmanship. Opponent No.3 bank always acted within frame work of law and unnecessarily dragged in the dispute. Hence, prayed to discharge opponent No.3 from the dispute.

4) Whereas no say order is passed against opponent no. 4 and vide Exh. 17 the opponent no. 5 filed the reply. Opponent no. 5 denied all the allegations and submitted that this court is having no jurisdiction to entertain the dispute. The dispute is barred by non-joinder of necessary parties. The disputed flat is held by member Mrs. Devayani Harishandra Raut Nee Sushila Laxman Parab as nominee since last more than 24 years post demise of original owner Mrs. Janaki Laxman Parab. Disputant obtained associate membership from Mrs. Devayani Harishandra Raut who is not made as a party to the dispute. Mrs. Devayani Harishandra Raut is in possession of disputed flat.

5) Opponent no. 5 further submitted that while granting associate membership disputant submitted notarized general power of attorney dated 10.01.2019 executed by Devayani Raut in favor of disputant in relation to disputed flat. Believing on the words of disputant, associate membership application was approved by Opponent no. 5 society. Thereafter, the disputant entered in the managing committee and appointed as a committee member on 29.09.2019 and in the month of September 2022, took a charge of chairmanship. But vide letter dated 22/04/2023, 02/05/2023 and 21/08/2023 Mrs. Devayani Raut opposed the membership of disputant and informed to the society that disputant grabbed the disputed flat by cheating and force. Thereafter Devayani Raut cancelled and revoked all the power of attorney including the power of attorney with respect to disputed flat. By letter dated 24/04/2023 disputant called upon the society not to share any document with Mrs. Devayani Raut and surprisingly denied title of Mrs. Devayani Raut. By letter dated 02/05/2023 Mrs. Devayani Raut informed to the society

that she is Bonafide member of society and thereafter by other letter requested to cancel the nomination in favor of disputant and given a nomination in name of her husband namely Mr. Harishandra Raut.

6) Opponent no.05 society further submitted that, after realizing that the disputant will be ousted at any time, he started to use pressure tactics by making allegations on managing committee members. Disputant using his authority as chairman without knowledge to the other committee members forwarded letter on the letter head of the opponent no.05 society to the Devyani Raut that their dispute is civil dispute and to obtain order from appropriate court.

7) Opponent No.05 further submitted that, Opponent no.05 society denied Disputant as legal heir and karta for flat no.302. Thereafter by letter dtd. 21.08.2023 Mrs. Devyani Raut informed to the society that, she had cancelled the power of an attorney and not issued any letter to the society for grant of associate membership in favor of the Disputant and urged to cancel the associate membership of the Disputant and also forwarded some additional documents. Thereafter in the Annual General Meeting dtd. 24.09.2023 by passing resolution opponent no.05 society cancelled the associate membership of the disputant and removed the disputant from the post of chairman of the opponent no.05 society. And by letter dtd. 18.10.2023 called upon disputant to restrain from using societies letterhead and to act as chairman of the society. Thereafter Mrs. Devayani Raut executed Leave and License Agreement in favor of Shirish Satam.

8) Opponent No.05 society further submitted that, thereafter election of managing committee took place as per due process of law

on 26.12.2023. As the disputant become associate member by illegal means hence, no prima facie case is in favor of the disputant. Associate membership of the disputant is cancelled hence, question of he is being chairman does not arise. Opponent no.05 society has gone under the process of election and disputant has not challenged the said election. Reliefs claimed in the dispute are final in nature, hence, cannot be granted at this stage. Hence, prayed to reject the application.

9) Ld. Advocate for the Disputant filed written arguments and also orally argued that Disputant was never served with any notice before passing any resolution and opportunity of being heard was not given to the Disputant. Removal is not confirmed by the Registrar. Disputant has been elected by the opponent no.05 society as Chairman. Opponent no.05 taken illegal action against the Disputant and not followed due process of law. On other hand the criminal case is lodged by the BMC in which opponent no.05 along with Disputant is shown as chairman of the opponent no.05 society. The alleged election is the subsequent act after institution of the present dispute. Disputant was never informed about this election. Opponents have failed to put for the end of natural tenure. Elections were conducted on representation of the society. Disputants right to oppose the election has been openly violated. Therefore, prima facie case is in favor of the Disputant. Hence, prayed to allow this application.

10) Ld. Advocate for the Opponent no.03 submitted that their say be treated as argument to this application.

11) Ld. Advocate for opponent no.05 society filed written notes of arguments and orally argued that, considering the say of the Opponent no.05 society associate membership was granted to the

Disputant on the basis of power of attorney of the Devyani Raut. However, Devyani Raut wrote letter to the society and requested to cancel the membership given to the Disputant. Relying on letter of the Devyani Raut Opponent society passed resolution and cancelled the associate membership granted in favor of the Disputant and also removed the Disputant from the post of Chairmanship as Disputant is not member of the society hence, he cannot file this present dispute. After expiry of tenure now new managing committee is appointed as per procedure of law which is not challenged by the Disputant. In view of illegal activities committed by the disputant no prima facie case is in favor of the Disputant. No urgency established by the Disputant to claim the interim relief. Hence, prayed to reject the application.

12) In view of above rival pleadings, it is admitted fact on record that Late Mrs. Janaki Laxman Parab was the original owner of the Dispute flat. It is also admitted fact on record that opponent no.05 society given associate membership to the Disputant with respect to dispute flat. It is very important to note that the disputant claiming to be grandson of the Late Mrs. Janaki Laxman Parab and submitted that his father Late Mr Maruti Laxman Parab was the eldest son of the Late Mrs. Janaki Laxman Parab. However, the details of how and when the disputant become associate member of the opponent no.05 are not given by the disputant. The disputant has nowhere submitted the copy of associate membership application and form on record. Further the disputant has not filed any prima facie document which can prove the relationship between the Late Mrs. Janaki Laxman Parab and Disputant. The Disputant has only produced on record copy of death certificate of Shri Maruti Laxman Parab. On this death certificate the place of death of the Late Shri Maruti Parab is not the dispute flat.

Further the name of mother is not mentioned on the death certificate. Hence, from this death certificate also chain of relationship claimed by the disputant is not established.

13) On contrary as per opponent no.05 society, Mrs. Devyani Raut is the legal heir of the Late Mrs. Janaki Laxman Parab. To support the claim the opponent society filed on record the form of nomination of the Late Mrs. Janaki Laxman Parab. I had gone through this nomination form where Shanti Laxman Parab and Devyani Raut are shown as nominees. The Opponent No.05 society filed on record copy of death certificate of the Shanti Laxman Parab. Thereafter opponent society transferred the shares of dispute flat in the name of Mrs. Devyani Raut. The submissions of the Opponent No.05 society prima facie supported with the entries in share certificate. Even looking towards the share certificate produced by the Disputant himself, it can be seen that on 20.04.2006 the entry of Mrs. Devyani Raut is made and thereafter the name of opponent is written which can be seen and thereafter deleted. So, the document of share certificate produced by the disputant himself supports the claim of opponent No.5 society that Mrs. Devyani Raut is the original owner/nominee of dispute flat.

14) Further, as per opponent no.05 society, Disputant submitted the associate membership form to the opponent no.05 society on 20.01.2019 apparently signed by the Mrs. Devyani Raut. As per opponent society Mrs. Devyani Raut is the legal heir of the Late Mrs. Janaki Laxman Parab. To support the submissions the opponent no.05 society copy of form of application for associate membership filed by the Disputant. It shows that, Smt. Devyani Raut given power of attorney in the name of Disputant and relying on the power of attorney

given by the Smt. Devyani Raut the opponent society handed over associate membership in favor of the Disputant.

15) So, documents on record filed by the opponent No.5 society support the above submissions of the Opponent No.05 society that based on the power of attorney given by Mrs. Devyani Raut associate membership was granted in favor of the Disputant. However, the letter dtd. 22.04.2023 filed by the opponent no.05 society shows that Mrs. Devyani Raut informed to the society that she will take action against the Disputant who forcibly taken the possession of dispute flat from the society. Copy of letter dtd. 24.04.2023 shows that, Mrs. Devyani Raut cancelled the power of attorney given in favor of the Disputant and also given letter to the opponent society for cancellation of nomination of the Disputant and informed her husband namely Harishchandra Narayan Raut is appointed as new nominee. Thereafter, the opponent no.05 society passed resolution in Annual General Meeting dtd. 24.09.2023 and removed the Disputant from the post of Chairman and also cancelled associate membership of the Disputant.

16) As per disputant, the opponent No.5 society while cancelling the membership of disputant did not follow the procedure prescribed for expulsion of member as per section 35 of the MCS Act and submitted that opportunity of being heard is not given to the disputant. Hence, he is claiming that the resolution dated 24/09/2023 passed by the society is illegal. Whereas, as per Ld advocate for opponent No.5 society the disputant is not expelled under section 35 of the MCS Act r/w. Bye law No.29 of the MCS Act. But he is removed under section 72 of the MCS Act. It is contention of opponent No.5 society that in view of fraud played by disputant he cannot be said to

be member of the society and therefore, no question of issuing notice under section 35 of the MCS Act will arise as this is not the case of expulsion but the cancellation of associate membership of disputant.

17) Before looking into legal provisions, it is necessary to consider the resolution passed by opponent No.5 society dated 24/09/2023. I had gone through the resolution passed by the opponent no. 5 society which reads as: 'Society have found that Mr. Sunil Parab is acting illegally and with malafide intentions which are detrimental to the larger interest if the members of society as also the proper working of the society. Ms. Devayani Raut (Flat No. 302) the Bonafide member as per the share certificate record, has withdrawn the Power of Attorney issued in favor of Mr. Sunil Parab authorizing him to represent her or to deal on her behalf in the society. Further, Mr. Sunil Parab as recorded in the above referred letters, has challenged the title of Ms. Devayani Raut from whom he had obtained the associate membership. It is also found that Mr. Sunil Parab has communicated with our society's bank "The Mumbai District Central Co-op Bank Ltd." Goregoan Branch, our auditor V.G. Kamat & Associates, BMC and Collector of Stamp, Bandra and sought the society's confidential information without consent from the other society committee. It is found that Mr. Sunil Parab is indulging in the fraudulent activities and mismanaging the society's records and on the contrary, he is making allegations against the other committee members. In view of the above, the society members who attended the society meeting have decided unanimously to remove Mr. Sunil Parab from the associate membership as also from the post of chairmanship. The members have authorized the committee members to initiate appropriate legal action both civil and criminal if needed against Mr. Sunil Parab and

protect society's larger interest with the help of legal consultant Mr. Mangesh Nalawade. For this purpose, the members have authorized the managing committee to spend such amounts as may be required for the legal actions as per the law. Secondly, society members have decided and appointed Mr. Jithesh P. Kotian as a Chairman as per recommendation given by the existing committee members.'

18) Considering the resolution, it is alleged by opponent no. 5 society that disputant is involved in fraudulent activities and mismanaging the society's record. Hence, opponent no. 5 society passed resolution of removal of disputant from associate membership and from the post of chairmanship of opponent no. 5 society.

19) So, considering the allegations levied against the disputant by opponent no. 5 society, there appears big clouds on validity of associate membership of the disputant. Disputant claiming to be associate member of opponent no. 5 society as he is legal heir of late Janaki Laxman Parab. However, to show the relationship late Smt. Janaki Laxman Parab disputant has not at all given any documentary evidence which can establish the chain of relationship. Disputant has only produced the copy of letter dated 24/04/2023 addressed to the opponent no. 5 society. I had gone through this letter. In this letter, it is barely submitted that Mrs. Devayani Raut is not owner of flat no. 302 and he has not cheated Mrs. Devayani Raut. It is submitted in the letter that disputant is the karta of family but again to prove the ownership over dispute flat no prima facie material brought by the disputant on record.

20) Whether the disputant is legal heir of the Late Smt. Janki Laxman Parab is not actual question because this Court is not no

jurisdiction to decide the legality of heirship of the parties. However, there are serious allegations of fraud played by the disputant on the opponent no.05 society which cannot be overlooked. Considering the limited jurisdiction with this court, it is necessary to consider who is legally member of dispute flat and to decide this question it is necessary to conduct the trial and without trial no prima facie opinion can be framed on the above aspect.

21) So, considering the whole dispute though in the present dispute, the disputant challenged the resolution pertaining to cancellation of associate membership and chairmanship of disputant, but issue involved in the case is the legality of membership of the disputant. Hence, this case cannot be treated as regular case of expulsion where the member is expelled as a defaulter. This is different case where the associate membership granted in favour of disputant is cancelled based on alleged fraud committed by the disputant for obtaining the associate membership of opponent No.5 society.

22) To support the submissions the disputant relied on case law **Anil s/o Wamanrao Gawande v/s Mahalaxmi Railway Karmachari Sahakari Griha Nirman Santha Ltd & Ors. 2014 (2) AIR BOM R 597 (DB)(NB): 2014 (1) All MR 20 (NB)(DB) : 2014 (2) Mh.L.J. 24 (NB) (DB)**. I had gone through the above Judgment. In this case law the member of the society, after payment of necessary amount for getting a plot, the society not given a plot and cancelled the membership of the member. So, considering the above facts, in the present case, the legality of associate membership given in favor of disputant, is itself under question. Facts of the above case laws are totally different from

a present case. Hence, with due respect to above case law, this case law will not be applicable to the present case.

23) The Ld. Adv. For disputant also relied on case law **Kolhapur Zilla Sahakari Doodh Utpadak Sangh Maryadit Vs. State of Maharashtra & 64 Ors. 2007 (6) All MR 704:2007 (6) Bom. C.R. 562.** However, as stated above facts of the above case law are completely different from case in hand. Hence, the above case law will not be applicable to the present case.

24) The Ld. Adv. For disputant also relied on case law **Pravina Ramji (Mrs.) alias Priti P. Shah Vs. State of Maharashtra & Ors. 2015 (4) All MR 6.** I had gone through the above case law. In this case law also, the members paid the necessary cost of construction to the developer. But society without following due procedure of law deleted the name of petitioner from the membership and created third party membership right. However, in the present case, there is big question on the legality of associate membership. Facts of the above case laws are different from the case in hand. Hence, the above case law will not be applicable to the present case.

25) The Ld. Adv. For disputant also relied on case law **Gujarat Bottling Co. Ltd. Vs. Coca Cola Co. (AIR 1995 SC 2372)** and **M/s Transmission Corporation of A.P. Ltd. vs. M/s Lanco Kondapalli Power Pvt. Ltd. (2006) 1 SCC 540 and Mr. Gurudas & Ors. vs. Rasaranjan & Ors. (AIR 2006 SC 3275).** **Pravina Ramji (Mrs.) alias Priti P. Shah vs. State of Maharashtra & Ors. 2015 (4) All MR 6.** I had gone through the above case laws. But as the facts of the above case laws are different, hence, with due respect with the case laws, they will not be applicable to the present case.

26) It is true that the provisions for expulsion of member are given under section 35 of the MCS Act, as per which before passing resolution it is necessary to give opportunity to be heard to the member against whom resolution is going to be passed. Admittedly, in the present case such opportunity of being heard was denied to the Disputant.

27) Now while establishing the prima facie case, the disputant has to come before the court with clean hands. For establishing the prima facie case, in this case it was expected from the disputant to give prima facie proof about his associate membership. When the clouds arise on legality of membership the disputant has to prima facie show the right of disputant over the dispute flat. The disputant was expected to submit the prima facie document, how the associate membership and by what relation associate membership was granted in favour of the disputant. However, in the present case, except the point of non-issuance of notice to prove the prima facie case, the disputant has not brought on record any material which can establish the chain of relationship with late Smt. Janaki Laxman Parab.

28) On the contrary, the opponent No.5 society to support their submission that cancelation of associate membership and chairmanship of disputant cannot be termed as expulsion under section 35 of the MCS Act, relied on Judgment **Ajit Inamdar V/s Divisional Joint Registrar (W.P. 6205/2008 decided on 30/09/2008)**. I had gone through the above case law. The facts of the case are relating to admitting two persons as member at a time. However, the dispute in present case is totally different. Hence the above case law will not be applicable to the present case.

29) Further while deciding the application, it is necessary to consider the prayers in interim application. The disputant is praying to restrain opponent no. 1, 2 and 5 from implementing the resolution passed against the disputant. However, to decide the legal validity of resolution it is a necessary to record the trial. Further, the dispute is filed for the declaration of resolution of opponent no. 5 society against the disputant as illegal and invalid. Without deciding the authenticity of resolution, it will not be proper to restrain the opponent no. 1, 2 and 5 from implementing the resolution.

30) The disputant also claimed that his removal from the post of chairmanship is illegal. However, as stated by opponent no. 5 society, the new managing committee is already elected in opponent no. 5 society. To support the submissions, the opponent no. 5 submitted on record copy of letter dated 26/12/2023 given by Returning Officer to the Assistant Deputy Registrar. In this letter, it is submitted by Returning Officer that he has completed the process of election as per rules and declared the elections results in the first committee meeting of newly elected members held on 26/12/2023. Accordingly, names of newly elected committee are not attached. As the newly elected members are in force till today, hence, declaration about chairmanship of the disputant will not come in play without challenging the election dated 26/12/2023. The disputant submitted that the disputant was not aware about the election process and it subsequent act after filing of dispute. Hence, he had not challenged the election process. However, it is necessary to note that documents pertaining to the election were produced by opponent no. 5 society alongwith WS which is filed before court on 06/02/2024. Thereafter, various dates have been passed. But till today the disputant has not made any single

attempt to challenge the election dated 26/12/2023. As the disputant had not challenged the election dated 26/12/2023, hence he is not entitled for any interim reliefs with respect to his chairmanship.

31) To claim the above prayer Disputant also relied on criminal complaint going against the Disputant before Hon'ble Chief Metropolitan Magistrate, 39th Court and submitted that in criminal proceedings the Disputant is referred as 'Chairman' of the Opponent No.05 society. Hence, prayed to grant the interim relief. I had gone through the documents filed by the Disputant below Exh. 28. The charge framed by the Hon'ble MM Court specifies that the disputant acted as chairman for the period of 10.04.2023 to 11.04.2024. In fact the disputant acted as chairman is not disputed fact. However, now new managing committee is being elected. The position of chairman is not permanent position. It will change after election. Hence, the reliance placed by the Disputant that he is referred as Chairman is not beneficial for him. Because without challenging the new managing committee no order can be passed against the new committee. Because disputant is asking prayer not to restrain him from acting as chairman. But when the new managing committee is in force under what provisions the disputant can be allowed to act as chairman without challenging the election process and when there is no claim against the new managing committee.

32) The disputant also prayed to restrain the opponent no. 1, 2 and 5 from issuing any letter and communication to any member, managing committee, General Body of the said society stating or implying directly or indirectly that disputant is not the member/chairman of the society. However, already resolution is

passed by the opponent society. Without declaring the same as illegal, this relief cannot be granted in favor of disputant.

33) The disputant also claimed interim reliefs against opponent Nos.3 and 4 but as the new committee is being elected, hence, without challenging the same, the disputant cannot be permitted to operate the accounts of opponent No.5 society. Therefore, the disputant is not entitled for any interim reliefs against opponent Nos.3 and 4 and also not entitled for interim relief which permits him to act as Chairman of opponent No.5 society. In view of above reasonings the disputant is not entitled for interim prayer claimed in prayer clause No. 5 to 9 also.

34) As the disputant has failed to establish the prima facie case. Therefore, balance of convenience, irreparable loss are also not in favor of disputant. Therefore, I answered point Nos. 1 to 3 in the negative and in answer to point No.4, I pass the following order: -

ORDER

1) Application is hereby rejected.

2) Cost in cause.

Mumbai
Date : 16/12/2024

Sd/-
(S. V. Metil-Patil)
Judge,
Co-operative Court No.1,
Mumbai.