

MHCO120000042024



**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO.
I, PUNE.**

(Presided over by Smt. Anju Jadhav, Judge)

Dispute no.03/2024

Mr. Sandip Maitra.

...Disputant

V/s

**Flora City Co-operative Housing
Society Ltd., and others.**

...Opponents

ORDER BELOW EXH. NO. 5
(On dated 24/07/2026)

1. The application, in brief, states as follows:
The disputant is the owner and occupant of flat No. M-303 situated in opponent No. 1 Co-operative Housing Society and claims to have been in exclusive possession and use of the parking space allotted to him since the year 2011. According to the disputant, at the time of construction of the building, the builder had constructed

side walls enclosing the said parking space, which remained in existence for more than twelve years without any objection from the society.

2. It is the case of the disputant that on 08/11/2023, opponent No. 2, acting on behalf of opponent No. 1 Society, demolished the side walls of the disputant's parking space without issuing any prior notice and without any lawful authority, purportedly pursuant to a resolution passed in the Managing Committee Meeting dated 31/10/2023. The disputant contends that the said resolution is illegal, arbitrary, and without jurisdiction, as it was passed without any agenda, statutory authority, or approval of the General Body. It is further alleged that the demolition of the side walls was wholly arbitrary and illegal, resulting in mental harassment and prejudice to the disputant.

3. The disputant further submits that the action of the opponents is contrary to the provisions of the Maharashtra Co-operative Societies Act, 1960 and the Bye-laws of the society. Accordingly, the disputant has sought a mandatory injunction directing the opponents to reconstruct and restore the demolished side walls during the pendency of the dispute. It is further contended that the disputant has established a prima

facie case, that the balance of convenience lies in his favour, and that irreparable loss and injury would be caused to him if the interim relief sought is refused.

2. Despite sufficient opportunity, the opponents failed to file their say to the present application. Consequently, the application proceeded for consideration in the absence of their reply.

4. Heard Ld. Adv. Shri. Abhay Ajnadkar for disputant. Opponents and advocate remained absent for argument.

5. Perused record and proceeding, on-going through the contentions and submissions of disputant following points arise for my determination and I record its findings thereon with reasons as under: -

POINTS

FINDINGS

1. Whether the applicant proves

prima-facie case in his favour? : Negative

Whether applicant proves balance of

convenience in his favour? : Negative

2. Whether applicants will suffer irreparable

loss, if stay is not granted? : Negative

What order? : Application is
rejected

REASONS

AS TO POINT NOS. 1 to 4 :

6. Since point Nos. 1 to 4 are interconnected and arise out of the same set of facts and common questions of law, they are taken up together for consideration for the sake of convenience and to avoid repetition of discussion.

7. I have carefully considered the pleadings of the disputant, the documents placed on record, and the submissions advanced by the learned Advocate appearing on behalf of the disputant/applicant. The present application seeks grant of temporary as well as mandatory injunction directing the opponents to reconstruct the alleged side walls of the parking space claimed by the disputant during the pendency of the dispute. The application is required to be adjudicated in the light of the well-settled principles governing the grant of temporary injunction, namely, whether the applicant has established (i) a prima facie case, (ii) that the balance of convenience lies in his favour, and (iii) that refusal of the interim relief would result in irreparable loss or injury.

8. Though sufficient opportunity was granted, the opponents failed to file their say. However, the mere absence of a reply does not, by itself, entitle the disputant to the relief claimed. It is the duty of the court to independently examine the pleadings and the material available on record to ascertain whether the essential requirements for grant of temporary injunction are satisfied.

9. Upon perusal of the application and the documents placed on record, it appears that the principal controversy relates to the legality of the demolition of the alleged side walls, the nature and extent of the parking space, the authority of the Society to remove the alleged structure, and the validity of the Managing Committee Resolution dated 31/10/2023. These are disputed questions of fact which require adjudication upon appreciation of oral and documentary evidence and, therefore, cannot be conclusively determined at the interlocutory stage.

10. The relief sought by the disputant is in the nature of a mandatory injunction directing the opponents to reconstruct the demolished side walls. Grant of such relief at the interim stage would substantially amount to granting the final relief sought in the main dispute. It is a

settled principle of law that an interim mandatory injunction is an exceptional relief and can be granted only in rare and compelling circumstances upon the applicant establishing a strong prima facie case of a high degree. From the material presently available on record, this court is not satisfied that the disputant has made out such an exceptional case warranting the grant of an interim mandatory injunction.

11. Furthermore, the disputant has failed to establish that the balance of convenience lies in his favour. On the contrary, grant of the relief sought would alter the existing state of affairs and virtually amount to granting the final relief claimed in the dispute. The disputant has also failed to demonstrate that refusal of the interim relief would result in such irreparable loss or injury as cannot be adequately compensated or suitably redressed in the event of his succeeding in the main dispute.

12. In view of the foregoing discussion, I am of the considered opinion that the disputant has failed to establish a prima facie case for grant of temporary as well as mandatory injunction. The balance of convenience does not lie in favour of the disputant, nor has the disputant established that refusal of the interim

relief would cause irreparable loss or injury. Accordingly, point nos. 1, 2 and 3 are answered in the negative. Consequently, the application for temporary and mandatory injunction deserves to be rejected. Hence, in answer to point No. 4, I proceed to pass the following order:-

ORDER

1. The application stands rejected.
2. Costs shall be in the cause.

(Smt. Anju Jadhav)

Date: 24/07/2026

Judge,

Place: Pune

Co-operative Court no. I, Pune.