

MHCO120000262024



**THE HON'BLE JUDGE, CO-OPERATIVE COURT NO.2
PUNE...**

(PRESIDED OVER BY Smt. V. A. MAKANDAR)

Dispute No.21/2026

Mr Mohammad Jawed Baygon

..... Disputant

V/s.

Devika Co-Operative Housing Society ltd.

.....Opponents

ORDER BELOW EXH.13

(Passed on 30/04/2026)

1. The present application is being filed by the Opponents under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint filed by the Disputant.
2. The Id advocate for the opponent submitted that the disputent has filed the present dispute seeking declarations and directions in the use of parking spaces situated in the premises of the society. The dispute as filed does not disclose the cause of action against the opponent no 2 and is otherwise not maintainable in law. The dispute also does not involve any issue touching the business, management, or affairs of the society, which is a mandatory requirement for maintaining a dispute under section 91 of the MCS Act
3. It is further submitted that the prayers made in the dispute demonstrate that the disputent is seeking general declarations that

parking spaces should be used only for parking purposes and that commercial or storage activities should not be conducted within the society premises. Such declarations can not be sought by an individual member against another member through a dispute under section 91 of the MCS

4. he learned Advocate for the opponent filed a say vide Exhibit 15 and contended that the present dispute expressly pertains to the management and business of the society. It was submitted that Section 91 expressly permits a member, a past member, or a person claiming through such members to initiate such proceedings. It was further submitted that the issue of limitation is a mixed question of law and fact, which cannot be decided without leading evidence. Additionally, it was argued that the cause of action is a recurring cause of action.

Heard both the advocates at length. perused the record.

5. Before deciding the present application, it is necessary to refer to the principles laid down by the Hon'ble Supreme Court in *Saumitra Kumar Sen vs. Shyam Kumar Sen*, (2018) 5 SCC 644, wherein it has been held that while considering an application under Order VII Rule 11 of the CPC, the court has to confine itself to the averments in the plaint alone and cannot travel beyond them. The Court is not required to scrutinise or appreciate evidence or examine the defence of the defendant. The purpose of this provision is to prevent a mini-trial at the threshold stage.

10. *Order VII Rule 11 of the Code provides that a plaint shall be rejected if—*

(a) It does not disclose a cause of action, or

(d) The suit appears from the statements in the plaint to be barred by any law.

6. In considering an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, it is a settled position of law that the Court must confine its examination strictly to the averments contained in the plaint and the documents relied upon therein. In the present case, a careful and meaningful reading of the prayers it reveals that certain reliefs sought by the disputant pertain purely to disputes between members. To that extent, such claims would not be maintainable under Section 91 of the Maharashtra Co-operative Societies Act, 1960, as it is well settled that disputes exclusively between members are not maintainable.

7. However, it appears from the prayers that the disputant has also sought substantive relief against Opponent No. 1 Society, namely, directions to take action against Opponent No. 2 and other members who are allegedly misusing parking spaces for purposes other than those permissible under the bye-laws. Such reliefs prima facie involve the society and relate to the management and regulation of its affairs.

8. In these circumstances, the plaint cannot be rejected partly. Under Order VII Rule 11(d), it cannot be said that the dispute, in its entirety, is barred by law. If certain reliefs may ultimately be found to be not maintainable, the presence of maintainable reliefs against the society can not be ignored.

9. Moreover, the present dispute has been instituted by the disputant against both the member and the Society. Upon a careful reading of the plaint, it becomes evident that the main issue involved

pertains to the use and regulation of parking spaces within the Society's premises.

10. The subject matter of parking, connected with the management, administration, and business of the Society, squarely falls within the ambit of Section 91 of the Maharashtra Co-operative Societies Act, 1960.

In view of the above discussion, the following order is passed.

ORDER

1. The application filed by the Opponent under Order VII Rule 11 of the Code of Civil Procedure, 1908, is hereby rejected.
2. No order as to costs.

Date:-30/04/2026

Place: Pune

(V. A. Makandar)

Judge,

Co-operative Court No.2,Pune.