



ORDER BELOW EXHIBIT 5
(Passed on this 31st day of July, 2025)

1. This is an application for temporary injunction by the plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908.

2. The plaintiff in the present suit seeks permanent injunction against the defendant. The subject matter of this application pertains to Unit No. 2A out of Plateau View Annex Cooperative Housing Society Ltd., Tal. Panchgani, Dist. Satara. It is hereinafter referred to as the suit property.

3. The case of the plaintiff in a nutshell is as follows:

The Plateau View Annex Cooperative Housing Society Ltd. is a registered cooperative housing society under the Maharashtra Cooperative Societies Act, 1960. Both the plaintiff and the defendant are the residents of the said society. The plaintiff submits that, except for the defendant, all the members of the society have been using their respective apartments exclusively for residential purposes. However, for the past 12 years, the defendant has been using the suit premises for

commercial activities. The defendant has listed the premises on various short term rental platforms such as Airbnb and has been regularly letting it out to tourists. This continuous commercial use has allegedly caused disturbances to the peaceful enjoyment of other members of the society. It is the case of the plaintiff that such use is in violation of the society's rules. Therefore, through the present application, the plaintiff, being the authorised representative of the society, seeks a temporary injunction restraining the defendant from continuing such use of the premises.

4. The defendant has resisted the present application *vide* his reply below Exh. 16. He has stated that the present application is based on fabricated facts and is false in nature. He has categorically denied all the adverse allegations made against himself. The defendant claims that the suit property was originally owned by Kusum Nana Kasurde who later sold it to Husani Abubakar Basrai. Upon the death of Husani Abubakar Basrai, the suit property property devolved upon his legal heir, Nafisa Husaini Malbari. Due to her advanced age, she was unable to continue the short term rental business conducted at the suit property. Consequently, the entire suit property, including the ongoing business and its goodwill was sold to the defendant on 16-12-2019. Accordingly, the defendant asserts that he has been running a hospitality business from the suit property since then without any

interference and without causing inconvenience to any member of the society. He further alleges that the plaintiff has fraudulently registered the Plateau View Annex Cooperative Housing Society Ltd. under the Maharashtra Cooperative Societies Act, 1960 by misusing his signature. Additionally, he claims that the said society has charged him excess maintenance fees. After raising concerns regarding the society accounts, the plaintiff, with *malafide* intent, initiated the present proceedings. Therefore, the defendant has prayed for the dismissal of the application.

5. Heard Shri. S.I. Inamdar, learned advocate for the plaintiff and Shri. S.S. Bamane, learned advocate for the defendant. Perused the application and the documents on record.

6. The following points arise for determination and my findings thereon and reasons thereof are as follows:

SR. NO.	POINTS	FINDINGS
1.	Whether the plaintiff has a <i>prima facie</i> case ?	Yes
2.	Whether the balance of convenience lies in favour of the plaintiff ?	Yes
3.	Whether the plaintiff will suffer irreparable loss, if interim injunction is refused ?	Yes
4.	What order ?	As per final order

REASONS

AS TO POINT NO. 1

7. At the outset, it would not be out of milieu to refer here that one cannot go into the merits of the suit at this stage of the suit. What is to be considered is the *prima facie* case and whether the same is in favour of the plaintiff.

8. In order to prove *prima facie* case the plaintiff has relied on several documents in the nature of society certificate of registration dated 10-10-2023, general meeting notice dated 23-03-2024, general meeting proceeding book dated 10-04-2024, notice dated 01-06-2024, reply to the notice by the defendant dated 29-06-2024, police complaint dated 18-02-2023 and letter to the collector dated 19-09-2022, etc.

9. The perusal of the aforesaid documents showcase that it is not in dispute that the Plateau View Annex Cooperative Housing Society Ltd. is a registered housing society under the Maharashtra Cooperative Societies Act, 1960. In this background, the bye laws of cooperative housing societies mandate that residential units are to be used solely for residential purposes unless permitted otherwise. The defendant through his reply to the present application as well as reply to the notice of the plaintiff dated 29-06-2024 has admitted to run a hospitality business over the suit property which in turn falls under the category of

commercial business. At this juncture, the defendant has not placed any document on record to showcase that the society had granted him permission to run such commercial business from the suit property or that such commercial use is permissible under the bye laws.

10. Furthermore, the meeting notice dated 23-03-2024 showcase that the society followed due procedure in calling a general body meeting. The proceeding book of the said meeting contains Resolution No. 4, wherein the members of the society by majority consensus resolved that all units within the building must be used exclusively for residential purposes and any commercial or non residential use shall not be permitted. The said fact *prima facie* establishes the collective intent and policy of the society.

11. Furthermore, the plaintiff has filed on record a copy of notice dated 01-06-2024 sent to the defendant cautioning him against any continued commercial use of the suit property. In response, the defendant through his reply dated 29-06-2024 while denying some of the allegations, has clearly admitted that he is running a hospitality business from the suit property. He seeks to justify the same by referring to historical usage and raises unrelated grievances regarding drainage pipelines and society accounts. However, such justifications do not

override the express resolution of the society or cure the violation of its rules.

12. The defendant has not placed on record any permission, license or no objection certificate from the society authorising him to run a commercial business from the suit property. Nor has he shown that the original owners had obtained such permission or that such use was legally permissible under the applicable development control regulations or bye laws. His mere assertion that he purchased the goodwill of the business from the previous owner does not entitle him to continue any activity that contravenes the rules of the society.

13. Thus, the material on record tilts in favour of the plaintiff and discloses a *prima facie* case of violation of society rules through unauthorised commercial use of residential premises. Accordingly, the Point No. 1 is answered in the affirmative.

AS TO POINT NO. 2

14. The Hon'ble Supreme Court in **(Dalpat Kumar And Anr. v. Prahlad Singh And Ors, (1992) 1 SCC 719)** observed that,

“The phrases “prima facie case”; “balance of convenience” and “irreparable loss” are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man’s

ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience.”

15. As per the ruling of the Hon'ble Supreme Court, the balance of convenience lies in favour of the plaintiff. The society, through its resolution, has expressly prohibited commercial use of residential premises. Allowing the defendant to continue such unauthorised commercial activity would undermine the collective will of the members of the society and disturb the residential character of the premises. On the other hand, restraining the defendant temporarily would merely prevent him from continuing a use that is *prima facie* in breach of society rules without affecting his rights of ownership. Hence, the Point No. 2 is answered in the affirmative.

AS TO POINT NO. 3

16. At this stage of the suit what is to be considered is the *prima facie* case and whether the same is in favour of the plaintiff. The end result of the suit does not depend on the present application. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success

in the suit would not place him in the position in which he was before injunction was refused.

17. If the defendant is allowed to continue running a hospitality business from the suit property, it is likely to cause irreparable harm to the peaceful enjoyment and residential environment of other members of the society. The influx of tourists, security concerns and increased wear and tear of common facilities may lead to disturbances that cannot be adequately compensated in money. Thus, the Point No. 3 is answered in the affirmative.

AS TO POINT NO. 4

18. The discretion of the Court is exercised to grant a temporary injunction based on the following three basic principles:

- a. Existence of a prima facie case as pleaded, necessitating protection of plaintiff's right.
- b. When the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's right or likely infringement of defendant's rights, the balance of convenience tilts in the favour of the plaintiff.
- c. Clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted.

19. The plaintiff in the present application has satisfied this Court that the material placed on record show that he has a *prima facie* case in his favour. Moreover, the rejection of the present application would possibly cause inconvenience and irreparable injury to him. Therefore, based on the above aspects the following order is passed :

ORDER

1. The application is allowed.
2. The defendant or any other person claiming under him, in any manner, is hereby temporarily restrained from using the suit property for commercial purposes, including conducting hospitality business or listing the premises on short term rental platforms until disposal of the suit.
3. No order as to costs.

Date: 31-07-2025

(Uday S. Ivare)
Civil Judge Junior Division,
Mahabaleshwar, Satara

Certificate

The contents of the PDF file are same, word to word correct as per original order.

Court Name	:	Shri. U. S. Ivare Civil Judge Junior Division, Mahabaleshwar.
Order date	:	31-07-2025.
Order signed date	:	31-07-2025.
Name of Stenograpuer	:	Shri. S. S. Kadam, Stenographer L.G. - 3
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