

HARSHADA H. SAWANT  
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.6128 OF 2026  
IN  
SUIT (L) NO.6122 OF 2026

Jayantilal Kalyanji Gada and Ors. Applicants  
.. (Original Plaintiffs)

**IN THE MATTER OF:**

Jayantilal Kalyanji Gada and Ors. .. Plaintiffs

**Versus**

Modern-Villa Co-operative Housing Society and  
Ors. .. Defendants

- .....
- Mr. Mayur Khandeparkar a/w. Dr. Pallavi Divekar, Ms. Aneesa Cheema and Ms. Aishwarya Shetty, Advocates i/by M/s. Divekar & Co. for Applicants / Plaintiffs.
  - Mr. Pradeep Thorat a/w. Mr. Rutuparn Deo, Mr. Atul Mishra, Advocates i/by Mr. Aditya Lele for Respondent No.1.
  - Ms. Sunitha Perumal, Advocate i/by Mr. Sachin V. Masurkar for Respondent No.7.
  - Mr. Karl Tamboly (appearing through Video Conferencing) a/w. Mr. Aamir Attari, Advocates i/by Aveyaan Legal for Respondent No.9.
  - Mr. Sunil C. Khandagale, Advocate i/by Komal Punjabi for Defendant No.10 – Corporation.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : APRIL 01, 2026**

**P.C.:**

- 1.** Heard Mr. Khandeparkar, learned Advocate for Applicants / Plaintiffs; Mr. Thorat, learned Advocate for Respondent No.1; Ms. Perumal, learned Advocate for Respondent No.7; Mr. Tamboly, learned Advocate appearing through Video Conferencing for Respondent No.9 and Mr. Khandagale, learned Advocate for Defendant No.10 –

Corporation.

**2.** Plaintiff is a admittedly member of the Society. However he is member in respect of commercial office area admeasuring 403 sq.ft on the ground floor of the Society. Society does not deny membership of Plaintiff. In fact it has offered membership to Plaintiff right since inception. Society is contemplating redevelopment. In redevelopment, residential members of the Society will be entitled to additional area. That apart there are three garages in the compound of the Society in respect of which Society General Body has taken certain decisions and Developer has agreed to give redeveloped premises in lieu of the garages. However Plaintiff is singled out by the Society General Body and denied any additional area in the same proportion that will be given to the residential members.

**3.** Case of Plaintiff is in isolation since he is only one such member of the Society who is holding area of 403 sq.ft. rather which is commercial area. Society and Developer have both argued in tandem that sanctioned plan does not envisage the right of Plaintiff and office of Plaintiff of which he is the member was built by the developer enclosing the stilt area. That does not take away the fact that Plaintiff was admitted as member of the Society right since inception. Infact such argument is not available to the Society. It may not be therefore right for Society to state that Plaintiff's occupation of the office area is

illegal. Infact Society is willing to accommodate the Plaintiff but does not wish to give him benefit of additional area.

**4.** In so far substantive right which has been acquiesced and acquired by Plaintiff over a period of time since its inception and OC from 2002 is concerned it is *prima facie* fructified. Hence at this interim stage, the Court will have to therefore decide the Plaintiff's case after hearing the Defendants.

**5.** I am giving an opportunity to Respondents / Defendants namely Society and the Developer to consider the position and accordingly the apprise the Court on the next adjourned date.

**6.** If there there is no conciliation possible without prejudice to the rights and contentions of the parties, the present case will be heard on merits accordingly and interim relief shall be passed by Court.

**7.** Parties shall complete their pleadings without recourse to the Court before the next adjourned date.

**8.** Affidavit-in-Reply, if any to be filed within a period of two weeks from today. Affidavit-in-Rejoinder, if any to be filed within a period of one week thereafter.

**9.** Stand over to **22<sup>nd</sup> April 2026**.