



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION (CRA) NO. 99 OF 2024
WITH
CIVIL REVISION APPLICATION (CRA) NO. 107 OF 2024

CIVIL REVISION APPLICATION (CRA) NO. 99 OF 2024

APPLICANTS :- 1 Smt. Hashma Begum Wd/o Haji
(Ori. Deft. Nos. 2
to 5 on R.A.)

- 2 M/s Dua Developers & Builders, A Partnership Firm, Through its Partner, Mr. Noor Mohd. Nagani S/o Mohd. Ashraf Nagani, Age 43 Years, Occupation: Business, R/o Ismailpura, Naya Godam, Yerkhada Road, Kamptee, District Nagpur.
- 3 Mr. Noor Mohd. Nagani S/o Mohd. Ashraf Nagani, Partner of Applicant No.02 Age 43 Years, Occupation: Business, R/o Ismailpura, Naya Godam, Terkhada Road, Kamptee, District Nagpur.
- 4 Mr. Parvez Siddique Noor Mohamaad, Partner of Defendant No.02 Age 53 Years, Occupation: Business, R/o Bunkar Colony, Kamptee, District Nagpur

..VERSUS..



RESPONDENTS :- **(Ori. Plaintiffs on R.A.)**

1. Mr. Abdul Shakoor S/o Mohammad Ayyub, Age: 72 Years, Occupation: Labour, R/o Pili Haweli Chowk, Kamptee, District Nagpur-441002.
2. Mr. Abdul Rasheed Patel S/o Abdul Raheem Patel, Age: 71 Years, Occupation: Labour, R/o Near Jama Masjid, Gujri Bazar, Kamptee, District Nagpur 441002.
3. Mr. Maqbool Mohammad Din Ansari, Age: 70 Years, Occupation: Labour, R/o Kamptee Colliery No.03, Mali Baba Quarter No.517, Tekadi, Post Indar Colliery, Parshivani, District Nagpur 441404.
4. Mr. Qumruddin S/o Abdul Majid, Age: 75 Years, Occupation: Labour, R/o Near Badi Masjid, Naya Bazar, Kamptee, District Nagpur 441002.
5. Mr. Nisar Ahmad S/o Nizamuddin, Age: 71 Years, Occupation: Labour, R/o Plot No.A-11, Civil Colony, New Yerkheda, Kamptee, District Nagpur 441002.
6. Mr. Khalil Ahmad S/o Mohammad Yusuf, Age: 55 Years, Occupation: Labour, R/o Ajim Seth Building, Warispura, Kamptee, District Nagpur 441002.
7. Mr. Mohammad Juber S/o Mohammad Mushtaq, Age: 45 Years, Occupation: Labour, R/o Plot



No.67, Naimuddin Road, Gujri Bazar, Kamptee, District Nagpur 441002.

8. Mr. Sayyad Abdul Matin S/o Sayyad Abdul Kadir, Age: 75 Years, Occupation: Labour, R/o Lal Madrasa Road, Warispur, Kamptee, District Nagpur 441002.

9. Mr. Mohammad Khalil S/o Mohammad Jalil, Age: 72 Years, Occupation: Labour, R/o Kalamana Road, B. B. Colony, Behind Life Line Hospital, Kamptee, District Nagpur 441002.

10. Mr. Shamim Ahmad S/o Mohammad Sabir, Age: 67 Years, Occupation: Labour, R/o Plot No.92, Kalamana Road, B. B. Colony, New Yerkheda, Kamptee, District Nagpur 441002.

Deleted as per order dated 13/03/2026 on death

11. ~~Mr. Mohatashim Alam S/o Mahmood Ahmad, Age: 73 Years, Occupation: Labour, R/o Bhagat Singh Nagar, Gujri Bazar, Kirana Market, Kamptee, District Nagpur 441002.~~

12. Mr. Quddus Akhtar S/o Haji Abdul Gaffar, Age: 75 Years, Occupation: Labour, R/o Dr. Sheikh Bunkar Colony, Beside Colony Masjid, Kamptee, District Nagpur 441002.



13. Mr. Mansor Ahmad S/o Mohammad Sayeed, Age: 58 Years, Occupation: Labour, R/o Near Dr. Misba Hourse, Ismilpura, Kamptee, District Nagpur 441002.
14. Mrs. Shehnaz Begam W/o Iftekhar Ahmad, Age: 64 Years, Occupation: Housewife, R/o Abdul Shakur Thekedar Road, Naya Bazar, Kamptee, District Nagpur 441002
15. Mr. Iftekhar Ahmad Ansari S/o Abdul Rehman, Age: 70 Years, Occupation: Labour, R/o Abdul Shakur Thekedar Road, Naya Bazar, Kamptee, District Nagpur 441002.
16. ~~Mrs. Rafia Bano W/o Abid Ali, Age: 65 Years, Occupation: Housewife, R/o Dr. Sheikh Bunkar Colony, Near Khatijabai School, Kamptee, District Nagpur 441002.~~
17. Mr. Mohammad Aslam S/o Abdul Halim, Age: 69 Years, Occupation: Labour, R/o House No.V-259, Near Church, Ismail Pura, Naya Godam, Kamptee, District Nagpur 441002.
18. Mr. Faiyaz Ansari S/o Abdul Majid, Age: 60 Years, Occupation: Labour, 8/o Near Chhal Company, B. B. Colony, Kalamana Road, Kamptee, District Nagpur 441002.
19. Mrs. Zaheda Bano Ansari W/o Ejaz Ahmad Ansari, Age: 74 Years,

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leave granted by
this Court ord. dt.
07/11/2025.



Occupation: Housewife, R/o Hakim Noor Mohammad Road, Pili Haveli, Kamptee, District Nagpur 441002.

- 20** Mr. Maqbool Ahmad S/o Mohammad Usman, Age: 55 Years, Occupation: Labour, R/o Near Masjid, Bhoi Line, Sufi Nagar, Kalamana Road, Kamptee, District Nagpur 441002.
- 21** Mr. Sharif Ul Hasan S/o Mohammad Yusuf, Age: 72 Years, Occupation: Labour, R/o Near Sufi Nagar Masjid, Bhoi Line, Sufi Nagar, Kamptee, District Nagpur 441002.
- 22** Mr. Masood Ahmad S/o Vakil Ahmad, Age: 61 Years, Occupation: Labour, R/o Near Choudhary Hospital, Warispura, Kamptee, District Nagpur 441002.
- 23** Mr. Abdul Wahid Ansari S/o Abdul Hafiz Ansari, Age: 78 Years, Occupation: Labour, R/o Near Khatijabai School, Dr. Sheikh Bunkar Colony, Kamptee, District Nagpur 441002.
- 24** Mr. Maqsood Hanif Ansari, Age: 70 Years, Occupation: Labour, R/o Flat No.202, Building No.05, Sarvoday Shrushti, Opposite Raheja Complex, Near Patri Pull, Kalyan(w), Thane, Maharashtra.



- 25 Mr. Shakeel Ahmad S/o Jamil Ahmad, Age: 60 Years, Occupation: Labour, R/o B. B. Colony, Near Masjid, New Yerkheda, Ward No.06, Kamptee, District Nagpur 441002.
26. Mr. Farooque Ahmad S/o Mohd. Mukhtar, Age: 62 Years, Occupation: Labour, R/o Near Khatijabai School, Dr. Sheikh Bunkar Colony, Kamptee, District Nagpur 441002.
27. Mrs. Zarina Khatoon W/o Mohammad Mushtaque, Age: 60 Years, Occupation: Labour, R/o Plot No.67, Near Elahi Tailor, Gujri Bazar, Naimuddin Road, Kamptee, District Nagpur 441002.
28. Mrs. Noor Afroz W/o Niaz Ahmad, Age: 70 Years, Occupation: Labour, R/o Near Badi Masjid, Naya Bazar, Kamptee, District Nagpur 441002.
29. Mr. Mashdoor Rehman S/o Shiekh. Rasul, Age: 73 Years, Occupation: Labour, R/o Kolsa Tall, Kamptee, District Nagpur 441002.
30. Mr. Naimuddin S/o Azizuddin, Age: 72 Years, Occupation: Housewife, R/o Near Champa Ashram, Ruiganj, Kamptee, District Nagpur.
- 31 Mr. Imtiyaz Ahmad S/o Ejaj Ahmad Ansari, Legal heir of Mr. Ejaz Ahmad Ansari S/o Jalaludin, Age: 70 Years, Occupation: Labour, R/o Pili Haveli,



Hakim Noor Mohammad Road,
Kamptee, District Nagpur 441002.

32 Mr. Mohammad Iqbal Ansari S/o Abdul Sattar, Legal heir of Mrs. Sharfunissa W/o Iqbal Ansari, Age: 75 Years, Occupation: Labour, R/o Plot No. 19/A, Behind Sangewar Hall, Haji Nagar, Kalamna Road, Yerkheda, Kamptee, District Nagpur 441002

33 Mrs. Khurshida Begam W/o Fakir Mohammad, Legal heir of Mr. Fakir Mohd. S/o Habib Khan, Age: 70 Years, Occupation: Labour, R/o Near House of Abdul Sahkooor Thekedar, Naya Bazar, Kamptee, District Nagpur 441002.

34 Mr. Irfan Ahmad S/o Mukhtar Ahsan, Legal heir of Mr. Mukhtar Ahsan Hamidi S/o Abdul Hamid, Age: 50 Years, Occupation: Labour, R/o Near Lal Madrasa, Warispura, Kamptee, District Nagpur 441002

35 Mr. Mohd. Anwar Kamal S/o Mohd. Iqbal, Legal heir of Mr. Mohd. Iqbal S/o Mohd. Ibrahim, Age: 40 Years Occupation: Labour, R/o Near Badi Masjid, Naya Bazar, Imli Bagh, Kamptee, District Nagpur 441002.

**(Ori. Deft. No. 1
on R.A.)**

36. M/s Madni Cooperative Housing Society Ltd. Registration No. NGP /KTE/HSG (TO) 778/85/86



Represented by its authorised Signatory and Secretary, Haji Abdul Sattar Ansari S/o Abdul Hafiz Ansari, Age 65 Years, having its office at C/o. Vali Tarine House, Gujri Bazar, Kamptee, District Nagpur.

Shri Masood Shareef, Advocate for Applicants.
Shri A.R.Kalraiya, Advocate for the Respondent nos. 1 to 10, 12 to 15, 17 to 23, 25 to 27, 29 to 31 and 33 to 35.
Shri I.A.Fidvi, Advocate for respondent no. 36.

WITH

CIVIL REVISION APPLICATION (CRA) NO. 107 OF 2024

APPLICANT :- M/s Madni Cooperative Housing Society Ltd. Registration No. NGP /KTE/HSG (TO) 778/85786
(Ori. Deft. No.1) Through its Secretary and authorised Signatory, Mohommed Mahmudal Hassan, Aged about 79 years Occ. Retired, r/o Vali Tarine House, Gujri Bazar, Kamptee, Dist: Nagpur

..VERSUS..

RESPONDENTS :- 1. Mr. Abdul Shakoor S/o Mohammad Ayyub, Age: 72 Years, Occupation: Labour, R/o Pili Haweli Chowk, Kamptee, District Nagpur-441002.
(1 to 35 Ori. Plaintiffs) 2. Mr. Abdul Rasheed Patel S/o Abdul Raheem Patel, Age: 71 Years,



Occupation: Labour, R/o Near Jama Masjid, Gujri Bazar, Kamptee, District Nagpur 441002.

3. Mr. Maqbool Mohammad Din Ansari, Age: 70 Years, Occupation: Labour, R/o Kamptee Colliery No.03, Mali Baba Quarter No.517, Tekadi, Post Indar Colliery, Parshivani, District Nagpur 441404.
4. Mr. Qumruddin S/o Abdul Majid, Age: 75 Years, Occupation: Labour, R/o Near Badi Masjid, Naya Bazar, Kamptee, District Nagpur 441002.
5. Mr. Nisar Ahmad S/o Nizamuddin, Age: 71 Years, Occupation: Labour, R/o Plot No.A-11, Civil Colony, New Yerkheda, Kamptee, District Nagpur 441002.
6. Mr. Khalil Ahmad S/o Mohammad Yusuf, Age: 55 Years, Occupation: Labour, R/o Ajim Seth Building, Warispura, Kamptee, District Nagpur 441002.
7. Mr. Mohammad Juber S/o Mohammad Mushtaq, Age: 45 Years, Occupation: Labour, R/o Plot No.67, Naimuddin Road, Gujri Bazar, Kamptee, District Nagpur 441002.
8. Mr. Sayyad Abdul Matin S/o Sayyad Abdul Kadir, Age: 75 Years, Occupation: Labour, R/o Lal



Madrasa Road, Warispur, Kamptee,
District Nagpur 441002.

9. Mr. Mohammad Khalil S/o
Mohammad Jalil, Age: 72 Years,
Occupation: Labour, R/o Kalamana
Road, B. B. Colony, Behind Life Line
Hospital, Kamptee, District Nagpur
441002.
10. Mr. Shamim Ahmad S/o
Mohammad Sabir, Age: 67 Years,
Occupation: Labour, R/o Plot No.92,
Kalamana Road, B. B. Colony, New
Yerkheda, Kamptee, District Nagpur
441002.
11. ~~Mr. Mohatashim Alam S/o
Mahmood Ahmad, Age: 73 Years,
Occupation: Labour, R/o Bhagat
Singh Nagar, Gujri Bazar, Kirana
Market, Kamptee, District Nagpur
441002.~~
12. Mr. Quddus Akhtar S/o Haji Abdul
Gaffar, Age: 75 Years, Occupation:
Labour, R/o Dr. Sheikh Bunkar
Colony, Beside Colony Masjid,
Kamptee, District Nagpur 441002.
13. Mr. Mansor Ahmad S/o Mohammad
Sayeed, Age: 58 Years, Occupation:
Labour, R/o Near Dr. Misba Hourse,
Ismilpura, Kamptee, District Nagpur
441002.
14. Mrs. Shehnaz Begam W/o Iftexhar
Ahmad, Age: 64 Years, Occupation:

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order dated
13/03/2026 on
death



Housewife, R/o Abdul Shakur
Thekedar Road, Naya Bazar,
Kamptee, District Nagpur 441002

15. Mr. Iftexhar Ahmad Ansari S/o
Abdul Rehman, Age: 70 Years,
Occupation: Labour, R/o Abdul
Shakur Thekedar Road, Naya Bazar,
Kamptee, District Nagpur 441002.

Res. No.16
deleted as per
order dated
07/11/2025.

~~16. Mrs. Rafia Bano W/o Abid Ali, Age:
65 Years, Occupation: Housewife,
R/o Dr. Sheikh Bunkar Colony, Near
Khatijabai School, Kamptee, District
Nagpur 441002.~~

17. Mr. Mohammad Aslam S/o Abdul
Halim, Age: 69 Years, Occupation:
Labour, R/o House No.V-259, Near
Church, Ismail Pura, Naya Godam,
Kamptee, District Nagpur 441002.

18. Mr. Faiyaz Ansari S/o Abdul Majid,
Age: 60 Years, Occupation: Labour,
8/0 Near Chhal Company, B. B.
Colony, Kalamana Road, Kamptee,
District Nagpur 441002.

19. Mrs. Zaheda Bano Ansari W/o Ejaz
Ahmad Ansari, Age: 74 Years,
Occupation: Housewife, R/o Hakim
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Occupation: Labour, R/o Near
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Kalamana Road, Kamptee, District Nagpur 441002.

- 21** Mr. Sharif Ul Hasan S/o Mohammad Yusuf, Age: 72 Years, Occupation: Labour, R/o Near Sufi Nagar Masjid, Bhoi Line, Sufi Nagar, Kamptee, District Nagpur 441002.
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- 25** Mr. Shakeel Ahmad S/o Jamil Ahmad, Age: 60 Years, Occupation: Labour, R/o B. B. Colony, Near Masjid, New Yerkheda, Ward No.06, Kamptee, District Nagpur 441002.
- 26.** Mr. Farooque Ahmad S/o Mohd. Mukhtar, Age: 62 Years, Occupation: Labour, R/o Near Khatijabai School,



Dr. Sheikh Bunkar Colony, Kamptee,
District Nagpur 441002.

27. Mrs. Zarina Khatoon W/o
Mohammad Mushtaque, Age: 60
Years, Occupation: Labour, R/o Plot
No.67, Near Elahi Tailor, Gujri
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28. Mrs. Noor Afroz W/o Niaz Ahmad,
Age: 70 Years, Occupation: Labour,
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Kamptee, District Nagpur 441002.
29. Mr. Mashdoor Rehman S/o Shiekh.
Rasul, Age: 73 Years, Occupation:
Labour, R/o Kolsa Tall, Kamptee,
District Nagpur 441002.
30. Mr. Naimuddin S/o Azizuddin, Age:
72 Years, Occupation: Housewife,
R/o Near Champa Ashram, Ruiganj,
Kamptee, District Nagpur.
- 31 Mr. Imtiyaz Ahmad S/o Ejaz Ahmad
Ansari, Legal heir of Mr. Ejaz Ahmad
Ansari S/o Jalaludin, Age: 70 Years,
Occupation: Labour, R/o Pili Haveli,
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Sharfunissa W/o Iqbal Ansari, Age:
75 Years, Occupation: Labour, R/o
Plot No. 19/A, Behind Sangewar
Hall, Haji Nagar, KalamnaRoad,



Yerkheda, Kamptee, District Nagpur
441002

- 33** Mrs. Khurshida Begam W/o Fakir Mohammad, Legal heir of Mr. Fakir Mohd. S/o Habib Khan, Age: 70 Years, Occupation: Labour, R/o Near House of Abdul Sahkoo Thekedar, Naya Bazar, Kamptee, District Nagpur 441002.
- 34** Mr. Irfan Ahmad S/o Mukhtar Ahsan, Legal heir of Mr. Mukhtar Ahsan Hamidi S/o Abdul Hamid, Age: 50 Years, Occupation: Labour, R/o Near Lal Madrasa, Warispura, Kamptee, District Nagpur 441002
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- 36.** Smt. Hashma Begum Wd/o Haji Abdul Qavi (since deceased)
- 37.** M/s Dua Developers & Builders, A Partnership Firm, Through its Partner, Mr. Noor Mohd. Nagani S/o Mohd. Ashraf Nagani, Age 43 Years, Occupation: Business, R/o Ismailpura, Naya Godam, Yerkheda Road, Kamptee, District Nagpur.
- 38.** Mr. Noor Mohd. Nagani S/o Mohd. Ashraf Nagani, Partner of Applicant



15

No.02 Age 43 Years, Occupation:
Business, R/o Ismallpura, Naya
Godam, Terkhada Road, Kamptee,
District Nagpur.

39. Mr. Parvez Siddique Noor
Mohamaad, Partner of Defendant
No.02 Age 53 Years, Occupation:
Business, R/o Bunkar Colony,
Kamptee, District Nagpur

Shri I.A.Fidvi, Advocate for Applicants.

Shri Masood Shareef, Advocate for Respondent nos. 37 to 39.

Shri A.R.Kalraiya, Advocate for the Respondent nos. 1 to 10, 12 to 15, 17 to
23, 25 to 27, 29 to 31 and 33 to 35.

CORAM : **ROHIT W. JOSHI, J.**
RESERVED ON : **30.04.2026**
PRONOUNCED ON **22.05.2026**

J U D G M E N T :

1) Notices for final hearing at the admission stage were issued in the present revision applications vide order dated 13/11/2025.

2) Heard finally with the consent of learned advocates for the respective parties.

3) The Civil Revision Application No. 99/2024 is



filed in order to challenge the order dated 29/07/2024 passed by the learned 3rd Joint Civil Judge, Senior Division, Nagpur rejecting the application for rejection of plaint filed by the defendant nos. 2 to 5 in Special Civil Suit No. 165/2023 vide Exh. 9. The revision petitioners in the said revision application are defendant nos. 2 to 5 in the said civil suit.

4) The Civil Revision Application No. 107/2024 is filed by the original defendant no. 1 in the aforesaid Special Civil Suit No. 165/2023 in order to challenge the order dated 29/07/2024 passed by the learned 3rd Joint Civil Judge Senior Division, Nagpur on the applications for rejection of plaint filed in the said civil suit vide Exhibits 19 and 20.

5) The application at Exh. 9 is filed by the original defendant nos. 2 to 5/revision petitioners in CRA No. 99/2024 and the applications at Exh. 19 and 20 are filed by the original defendant no. 1/revision petitioner



in CRA No. 107/2024. The parties will be referred to as “the plaintiffs and the defendants” hereinafter.

6) The defendant no. 1 is a registered co-operative society. The plaintiffs claim to be members of defendant no. 1- society. It is the case of the plaintiffs that the defendant no. 1 had entered into an agreement of sale with respect to suit property, which comprises of land admeasuring around 5.297 H.R., situated at Village – Yerkheda, Tahsil-Kamptee, District-Nagpur with the defendant no. 2 and her deceased husband on 15/04/1985 and 22/05/1987 *inter alia* agreeing to purchase the same for a consideration of Rs. 3,10,000/-, which has been paid by defendant no. 1 to defendant no. 2 and her deceased husband from time to time. It is their case that the defendant no.1 was placed in possession of the suit property in terms of the agreement of sale. Their contention is that the defendant no. 2 and her husband mischievously sold the suit property to



defendant 3 vide sale deed dated 22/11/2012. It is contended by them that in view of the said development, the defendant no. 1-society had instituted a suit being Special Civil Suit No. 178/2013 against defendant nos. 2 to 5 *inter alia* seeking the following reliefs:-

(i) acquisition of title over suit property by way of continuous possession as per agreement dated 15/04/1985 and 22/05/1987;

(ii) declaration of entitlement to protect possession under Section 53-A of the Transfer of Property Act;

(iii) declaration that sale deed dated 22/11/2012 is illegal and not binding on society;

(iv) perpetual injunction against dispossession; and

(v) declaration that society is entitled to execute and implement the scheme sanctioned under Section 20 of Urban Land (Ceiling and Regulation) Act, 1976 (for brevity, "ULC Act").

7) It is the case of the plaintiffs that the suit



property was governed by the provision of the ULC Act and that it was declared as surplus vacant land by the competent authority under the ULC Act and further that on an application being made, the competent authority had passed the order of exemption as per Section 20 of the ULC Act on 24/01/1995. The plaintiffs have contended that while the said civil suit filed by the society was pending, the society allegedly arrived at compromise with the defendant nos. 2 to 5 who are defendants in the Special Civil Suit No. 178/2013 filed by it and accordingly, the suit came to be disposed of by passing a compromise decree dated 15/09/2022. The plaintiffs have filed the present suit as members of the defendant no. 1 society seeking the following reliefs:-

- (i) declaration that compromise decree passed in Special Civil Suit No. 178/2013, is a nullity;
- (ii) declaration that sale deed executed by defendant



no. 2 in favour of defendant nos. 3 to 5 are null and void on the ground that the members of society have not consented to compromise;

(iii) declaration that defendants do not have right to transfer the suit property; and

(iv) perpetual injunction against defendants restraining them from transferring the suit property.

8) The foundation of the case of the plaintiffs is that the tenure of the Executive Committee of the society expired in the year 2019, and ever since then, elections were not conducted and as such the alleged compromise was without any authority. It is contended that the compromise was arrived at for a meager amount of Rs. 1,60,00,000/- although the market value of the suit property is around Rs.40 Crores. Thus, the compromise decree in Special Civil Suit No. 178/2013 is challenged by filing the present suit on the ground that the



compromise was entered into by an Executive Committee that was not lawfully holding office, and on the ground of fraud.

9) The defendant no. 1/co-operative society had filed two applications for rejection of plaint vide Exh. 19 and 20. Their contention in the application at Exh. 19 is that the suit was required to be valued under Section 6(iv)(ha) of the Maharashtra Court-fees Act. The contention in the application at Exh. 20 is that the Civil Court did not have jurisdiction to entertain the suit, since the subject matter of the suit fell within the jurisdiction of the Cooperative Court in view of Section 91 of the Maharashtra Co-operative Societies Act (for brevity, "MCS Act"); statutory notice under Section 164 of the MCS Act was not issued; there is no statement in the plaint that the plaintiffs had not consented to the compromise and a separate suit for challenging the compromise decree is not maintainable. Likewise the



defendant nos. 2 to 5 filed an application for rejection of plaint vide Exh. 9 on the ground that the suit was not maintainable under Order 23, Rule 3-A of the Code of Civil Procedure as also the suit was not maintainable since the jurisdiction to entertain the same was vested with Co-operative Court.

10) The plaintiffs opposed the said applications by filing separate replies. With respect to the jurisdiction of the Co-operative Court, their contention is that that the dispute between the parties is not covered by Section 91 of the MCS Act and that the parties to the suit also do not answer the description of persons whose disputes can be contested before the learned Co-operative Court. With respect to bar under Order 23, Rule 3-A of the C.P.C., the contention is that the compromise decree is actuated by fraud and that the Executive Committee members had ceased to hold office and were, therefore, not competent to enter into the compromise. It is contended that in view



of the aforesaid facts, Order 23, Rule 3-A of the C.P.C. will not be applicable.

11) I have heard the rival submissions as the aforesaid. I have perused the plaint, applications at Exh. 9, 19 and 20, replies filed to the said applications and the impugned orders passed by the learned trial Court.

12) As regards the notice under Section 164 of the MCS Act, the said provision contemplates that no suit against a co-operative society or any of its officers relating to business of the society can be instituted without giving two months' notice to the Registrar of Co-operative Societies. The plaintiffs are aggrieved by the compromise decree passed on the basis of compromise between defendant no. 1 society and defendant nos. 2 to 5 in relation to a property in respect of which the defendant No.1 had entered into agreement of sale with defendant No.2 and her husband. In order to deal with the objection pertaining to notice under section 164, it



will be necessary to examine what is the business of the society. According to the plaintiffs, the business of the society was to develop land in order to provide housing sites to members of the defendant No.1 which is a co-operative housing society. Since revision arises out of order passed under Order VII Rule 11, the version of the plaintiffs will have to be taken on its face value. The plaintiffs are aggrieved by alleged compromise and compromise decree passed pursuant to such compromise in a suit instituted by defendant No.1 against defendant Nos.2 to 5. The settlement of dispute pertaining to land agreed to be purchased by the defendant No.1/Society may be a dispute pertaining to affairs of the society, however, such dispute will not be pertaining to business of the society. The dispute in the civil suit, therefore, does not pertain to business of the co-operative society, although it may relate to affairs of the co-operative society.



13) It would be appropriate to refer to the judgment of this Court in the case of *Vardhaman Developers Ltd., Vs. Borla Co-operative Housing Society Ltd., and ors.* reported in *2014 (2) BCR 420*. In the said case the respondent was a co-operative housing society which was formed with a view to provide open plots or flats to its members. The society had entered into an agreement of re-development with respect to an apartment scheme constructed for its members. A suit was filed by some members of the society challenging the re-development agreement entered into by and between the society and developer. An application for rejection of plaint was filed in the said suit contending that the suit was not maintainable in the absence of notice under Section 164. Dealing with the said contention, this Court has held that the term business of the society will be restricted to development of apartment scheme for allotment of apartments to members of the society and



shall not include an agreement of redevelopment of a building which was already constructed by a society. Accordingly, it was held that notice under section 164 was not required.

14) As regards Section 91 of the MCS Act, jurisdiction is vested with the Co-operative Court only when the subject matter of the dispute is covered by the said provision and the parties to the proceedings fall within the description of persons specified in the provision. Both the conditions must be satisfied. It is already held that the subject matter of the suit is not pertaining to, “business of the society”. Likewise, there cannot be any dispute that the defendant nos. 2 to 5 in the suit are neither members nor office bearers of the defendant no. 1/cooperative society, at present or at any time in the past. Therefore, the learned Co-operative Court will not have jurisdiction to entertain the suit.

15) The contention with respect to the jurisdiction



of the Co-operative Court under Section 91 and issuance of statutory notice under Section 164 of the MCS Act are liable to be rejected.

16) The other contention of the learned Advocates for the applicants is that the suit is barred in view of Order 23, Rule 3-A of the C.P.C. It is contended that if the plaintiffs are aggrieved by the compromise decree, the only option available to them is to file an appropriate application under Order 23, Rule 3 of the C.P.C. The contention is opposed on the ground that the compromise decree is passed at the behest of the persons who were not competent to enter into compromise and that the compromise is actuated by fraud.

17) With respect to the contention of the plaintiffs that the suit is maintainable since the compromise decree is obtained by practicing fraud, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of *Horli Vs. Keshav* reported in (2012) 5 SCC



525. The Hon'ble Supreme Court has categorically held that even in a case where a compromise decree is alleged to have been obtained by fraud, the only remedy available to the aggrieved party is to approach the court, which had passed the compromise decree, and that a separate suit in this regard will be barred. The contention of the plaintiffs that the suit is not barred since the compromise decree is allegedly obtained by fraud, cannot be accepted. The other contention that the compromise decree is passed on the basis of a compromise entered into by an Executive Committee, which was no longer holding office, can also be agitated before the Court that passed the compromise decree. The only recourse available to the plaintiffs was to approach the same court by filing an application. The bar under Order 23, Rule 3-A of the C.P.C to file a fresh suit to set aside a compromise decree will clearly be attracted, even if the contention of the plaintiffs that the tenure of the



Executive of Committee had expired is accepted.

18) The contention that the suit will be maintainable since the plaintiffs who are the members of the co-operative society are not parties to the agreement based on which the compromise decree is passed and further that they are also not parties to the civil suit in which the compromise decree is passed. The said contention is also liable to be rejected in view of judgment of the Hon'ble Supreme Court in the case of *Shri Mukund Bhavan Trust Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle* reported in (2024) 15 SCC 675, wherein the Hon'ble Supreme Court has categorically held that even if a third party intends to challenge a compromise decree, the only recourse available is to approach the same court, which had passed the compromise decree and that a fresh suit for challenging compromise decree, is barred even if it is filed by a person who is not party to the compromise or a



party to the suit in which a compromise decree is passed.

19) In view of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court, the suit filed by the plaintiffs is not maintainable. The learned trial Court has committed a serious jurisdictional error while passing the impugned orders holding that the suit is maintainable. The learned trial Court did not appreciate that the suit is statutorily barred by the provisions of Order 23 Rule 3 and Order 23 Rule 3-A of the C.P.C. By virtue of the impugned orders, the learned Trial Court is proceeding with the adjudication of a civil suit, which is statutorily barred and is, as such, exercising jurisdiction not vested with it. This is, therefore, a fit case for exercising the jurisdiction under Section 115 of the C.P.C. to quash and set aside the impugned orders.

20) Hence, the Civil Revision Applications are **allowed** by passing the following order:-



ORDER

(i) Orders dated 29/07/2024 passed by the learned 3rd Joint Civil Judge, Senior Division, Nagpur below applications at Exhibits 9 and 20 in Special Civil Suit No.165/2023 are quashed and set aside.

(ii) The applications at Exhibits 9 and 20 in Special Civil Suit No.165/2023 pending on the file of the learned 3rd Joint Civil Judge, Senior Division, Nagpur are **allowed** and plaint in the said civil suit is **rejected**.

(iii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)