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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18770 OF 2024

ATUL
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1. **Murlidhar Govind Takawale,**
Age 82 years, Occupation Retired,
R/at: 41, Shamshilpa, Jedhe Nagar,
Bibvewadi, Pune 411 037
 2. **Vasundhara Shivraj Powar,**
Age 53 years, Occupation Business,
R/at: 1573, C Ward, Yashwant Krupa
Building, Bindu Chowk, Shaniwar
Peth, Kolhapur 416 002
 3. **Vaidehi Subhashish Ghosh,**
Age 45 years, Occupation Housewife,
R/at: Flat No.T1, Nirupama Apartments
167, Diamond Harbour Road,
Kolkata South 24, West Bengal 700 063
 4. **Vrushali Rajarshi Das,**
Age 43 years, Occupation Service,
R/at: 15/22, Near Kasba Police
Station, Bose Pukur Road, Kolkata,
South 24, Wsest Bengal 700 063
- ... Petitioners

Vs.

1. **Deepali Pradeep Takawale,**
Age 64 y ears, Occupation Homemaker,
R/at: E-604, Reelicon Garden Grove,
S/N/39 15B & 16 Ambergaon Budruk,
Pune 411 046
2. **Mahendra Pradeep Takawale,**
Age 41 years, Occupation Service,
R/at: E-604, Reelicon Garden Grove,

S/N/39 15B & 16 Ambegaon Budruk,
Pune 411 046

3. Shri Chhatrapati Rajaram Cooperative Housing Society Limited, having its registered office at Survey No.682 A, Bibvewadi, Pune 411 037 through it's Chairman and Secretary

a) **Chairman: Amit Ursal**,
Age Adult, Occupation Business,
R/at Survey No.682 A, Bibvewadi,
Pune 411 037

b) **Secretary: Ravindra Mane**,
Age Adult, Occupation Business,
R/at Survey No.682 A, Bibvewadi,
Pune 411 037

... Respondents

Mr. Shrivallabh S. Panchpor for the petitioners.

Mr. Shailendra S. Kanetkar for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 29, 2026.

PRONOUNCED ON : MAY 5, 2026

JUDGMENT:

1. By way of the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the legality, propriety, and correctness of the judgment and order dated 10 October 2024 rendered by the Maharashtra State Cooperative Appellate Court (Mumbai), Bench at Pune, in Appeal No. 40 of 2024.

2. The factual matrix, as set out by the petitioners and forming the foundation of the present proceedings, is briefly stated thus. The petitioners are the original opponents in Dispute No. 88 of 2023 instituted by respondent Nos. 1 and 2 seeking reliefs of declaration, injunction, and a direction against respondent No. 3 to execute a joint lease deed in favour of respondent Nos. 1 and 2. The said dispute came to be filed before Cooperative Court No. 2 at Pune. It is the specific case of the petitioners that respondent Nos. 1 and 2, by employing concise yet artful drafting, have sought to camouflage the real nature of the reliefs claimed, which, in substance, fall outside the ambit of adjudication permissible under Section 91 of the Maharashtra Cooperative Societies Act, 1960. Respondent Nos. 1 and 2 have, inter alia, sought a declaration that they are entitled to the execution of a joint lease deed. According to the petitioners, such a relief, though couched in the form of a declaratory claim, in effect seeks adjudication upon rights akin to ownership in respect of the suit property, purportedly founded upon a document described as a “family arrangement deed.” It is contended that the said dispute does not pertain to or arise out of the management or business of the concerned housing society and therefore falls beyond the jurisdictional scope of Section 91 of the Maharashtra Cooperative Societies Act, 1960. The petitioners further submit that the very validity, character, and legal effect of the alleged family arrangement deed are themselves contentious issues requiring adjudication, which cannot be undertaken by the Cooperative Court in exercise of its limited jurisdiction. It is thus urged that the claim set up by respondent Nos. 1 and 2, even if

traced through an associate membership, and predicated upon what is alleged to be a legally untenable arrangement, does not constitute a dispute touching the business of the society. Consequently, the controversy between the parties is asserted to be one lying outside the purview of Section 91 of the said Act.

3. Upon service of summons and notice issued by Cooperative Court No. 2 at Pune, the petitioners entered appearance in the said dispute proceedings. Contending that the dispute as framed was devoid of jurisdiction and failed to disclose a cause of action within the meaning of law, the petitioners preferred an application at Exhibit 24 seeking rejection of the plaint/dispute under Order VII Rule 11 of the Code of Civil Procedure, 1908. Respondent Nos. 1 and 2 filed their reply at Exhibit 25 opposing the said application. The Trial Court, upon consideration of the pleadings, the application, and the reply thereto, and after affording an opportunity of hearing to both sides, proceeded to adjudicate upon the said application. By its judgment and order dated 26 April 2024, the Trial Court was pleased to allow the application and rejected the dispute, holding that it suffered from lack of jurisdiction and absence of a cause of action, as contended by the petitioners.

4. Being aggrieved thereby, respondent Nos. 1 and 2 carried the matter in appeal. The Appellate Court, by its judgment and order dated 10 October 2024, allowed the appeal and reversed the findings recorded by the Trial Court. The Appellate Court set aside the order of rejection passed by the Trial Court, observing that the Trial Court had committed an error in law in its approach to the

application and had arrived at an erroneous conclusion by overlooking the peculiar facts and circumstances of the dispute. It is in these circumstances that the petitioners, being dissatisfied and aggrieved by the reversal of the Trial Court's order, have invoked the writ jurisdiction of this Court by filing the present petition.

5. Mr. Panchpor, learned counsel appearing on behalf of the petitioners, submits that a dispute between a member of a cooperative society and the society, provided it pertains to or touches upon the business or management of the society, would fall within the ambit of Section 91 of the Maharashtra Cooperative Societies Act, 1960. However, it is contended that a dispute purely inter se between members does not satisfy the jurisdictional requirement under the said provision and, therefore, cannot be entertained or adjudicated by the Cooperative Court. It is further submitted that the question relating to the validity, enforceability, and legal effect of a so-called family arrangement agreement lies beyond the scope of jurisdiction conferred upon the Cooperative Court under Section 91. According to the learned counsel, a housing society cannot be compelled to act upon such an agreement, particularly when its legality is itself under challenge by rival claimants. It is thus urged that, in the absence of prior adjudication regarding the legality and binding nature of the said agreement inter se between the contesting parties, the society cannot be directed to confer membership rights or to execute a joint lease deed in favour of respondent Nos. 1 and 2 along with the petitioners.

6. Developing his submissions further, learned counsel contends that where, by means of artful or clever drafting, an illusion of a cause of action is created, it becomes the duty of the Court to examine such pleadings at the threshold and to reject the same at the earliest stage. It is submitted that a legitimate cause of action for instituting such a dispute would arise only in a situation where all parties to the alleged agreement, or those claiming through them, jointly seek execution and registration of a lease deed and the society refuses to act upon such a request. In the absence of such circumstances, no cause of action can be said to exist. It is further submitted that the provisions of Order VII Rule 11(a) to (f) of the Code of Civil Procedure are attracted only in cases where the plaintiff fails to disclose a cause of action or where the suit is barred by law as contemplated under clauses (b) to (f). It is contended that the power of rejection under the said provision is to be exercised strictly in accordance with the conditions prescribed therein. In particular, where rejection is sought under Order VII Rule 11(d), the Court is required to identify the specific provision of law under which the suit is barred. It is also urged that, while deciding such an application, the Court is not expected to undertake a detailed scrutiny of the evidence or to test the merits of the defence raised by the defendants, as such an exercise would amount to conducting a mini trial at a preliminary stage, which is impermissible in law.

7. Placing reliance upon the settled legal position as enunciated by the Supreme Court as well as this Court, learned counsel submits that, upon a plain reading of the plaint, it becomes evident

that the disputants have asserted their status as legal heirs of an associate member in respect of Suit Plot No. 41 situated within the respondent No.1-society. In support of this assertion, the disputants have produced, inter alia, a copy of the share certificate at Exhibit 3. A perusal of the said document, according to the learned counsel, prima facie indicates that the name of one Mr. Pradeep Govind Takwale, being the predecessor of the disputants, came to be recorded as an associate member pursuant to a resolution passed by the managing committee of the society in its meeting dated 24 April 1980, acting upon a written request made by the original member, Smt. Sushila Murlidhar Takwale. It is, therefore, contended that the very foundation of the claim of the disputants rests upon such associate membership.

8. In support of the aforesaid submissions, learned counsel for the petitioners has placed reliance upon the judgment of this Court in the case of *Alok Agarwal and Others vs. Punam Cooperative Housing Society Limited & Others*, 2025 SCC OnLine Bom 5358.

9. Per contra, Mr. Kanetkar, learned counsel appearing for respondent Nos. 1 and 2, submits that, upon a plain reading of the statutory definition of “associate member,” it is evident that the society had, in fact, recognized the rights of the predecessor of the disputants in respect of the suit property by admitting him as an associate member and thereby acknowledging his status as a joint shareholder. It is contended that, in view of such recognition, and upon the demise of the said associate member, the disputants, being his legal heirs, are entitled to assert their rights and possess the necessary locus to institute the dispute against the society. It is

thus submitted that the parties to the present proceedings squarely fall within the categories contemplated under Section 91(1)(a) to (e) of the Maharashtra Cooperative Societies Act, 1960.

10. Learned counsel further submits that, insofar as the subject matter of the dispute is concerned, the same pertains to the entitlement of the disputants to seek execution of a joint lease deed in respect of the suit plot. It is urged that, in the case of a tenant ownership type housing society, it forms part of the statutory and functional obligations of the society to execute lease deeds in favour of its members in respect of the plots allotted to them. In that view of the matter, the dispute raised by the disputants directly relates to and touches upon the business and management of the society within the meaning of Section 91(1) of the Act. Consequently, it is submitted that the Cooperative Court possesses the requisite jurisdiction to entertain and adjudicate upon the dispute, and that the same has been rightly held to be maintainable.

REASONS AND ANALYSIS:

11. I have heard the learned counsel for the parties at some length and I have also gone through the pleadings, the orders passed by the Courts below, and the material placed on record. The dispute, in substance, arises from the order of the Cooperative Court rejecting the dispute under Order VII Rule 11 of the Code of Civil Procedure, and the later order of the Appellate Court setting aside that rejection and permitting the dispute to proceed.

12. The petitioners submit that the controversy is between private claimants inter se, and not a dispute touching the business or management of the society. Their submission is that Section 91 of the Maharashtra Cooperative Societies Act, 1960, cannot be stretched to cover a claim founded on a family arrangement. According to them, the society cannot be made to act upon a document whose legal force is not tested between the contesting parties. It is said that the disputants are only trying to convert a family claim into a society dispute by a manner of clever drafting. It is further urged that if the plaint does not disclose a real cause of action against the society, the Court must reject it at once, because a false appearance of cause of action cannot be allowed to survive.

13. The said argument of the petitioners cannot be accepted. It is true that a pure family contest, may not become a dispute under Section 91. It is also true that a cooperative court cannot be allowed to travel beyond the statute. But the Court must see the substance of the averments. The dispute here is not filed by total outsiders. The disputants claim through a predecessor who was shown as an associate member. They rely upon the share certificate and the resolution of the society. If the society itself has recorded such association, then at least prima facie the matter cannot be said to be outside the society framework. The question whether the claimed rights are legally sound, or whether the family arrangement has binding effect, is a matter which may require proof. It cannot be concluded in a casual manner only from the petitioners' objection.

14. The learned counsel for the petitioners has relied upon the principle that a cause of action created by clever drafting must be nipped in the bud. That principle is not in dispute. But the same principle does not mean that every case containing a disputed factual foundation should be rejected without trial. Order VII Rule 11 is a drastic power. It can be exercised only when the defect is clear from the plaint itself. If the Court has to travel into facts, examine the effect of documents, or decide contested legal consequences of a document, then the matter ordinarily goes beyond the narrow compass of rejection at threshold. The Court is not required to weigh evidence as if deciding the dispute. The petitioners' submission would have merit only if the plaint by itself showed an absolute bar.

15. The petitioners have also argued that the legality of the family arrangement deed cannot be decided by the Cooperative Court. If the dispute were to turn only upon the declaration of title as between family members, with no nexus to the society's obligations, then the question of jurisdiction may indeed arise. Yet in the present matter the pleadings show something more. The disputants assert that the society has recognized their predecessor as an associate member. They seek execution of a joint lease deed. The relief is to compel the society and connected parties to act in a particular manner regarding the suit plot. Whether the disputants succeed on merits is separate question. At this stage, it is enough that the plaint discloses a dispute which cannot be dismissed as wholly foreign to the society.

16. The petitioners have further relied on the judgment in *Alok Agarwal and Others*. The said authority indeed supports the broad proposition that the jurisdiction of the Cooperative Court is not unlimited and that disputes must answer the statutory description. However, every authority must be applied to its facts. If the plaint in the present case contains an averment that the predecessor was inducted as associate member by resolution of the society, and if a share certificate is produced, then the matter cannot be treated as one where there is no society relationship. The ratio of any judgment cannot be used to short circuit factual controversies which are unresolved.

17. The respondents submit that the society had recognized the predecessor of the disputants as an associate member, and therefore the legal heirs of such member have sufficient locus to maintain the dispute. The share certificate, as referred in the pleadings, indicates that the society passed a resolution and recorded the name of the predecessor as associate member. That document may not conclude every question. Yet it is enough to show that the dispute does not arise in a legal vacuum. Once such association is pleaded and supported by a document, the issue whether the heirs can step into the shoes of the deceased member, and to what extent, becomes a matter which demands examination.

18. The respondents have also submitted that the subject matter of the dispute relates to entitlement for execution of a joint lease deed in respect of the suit plot, and that such matter falls within the business and management of a tenant ownership housing

society. If the plaint asserts that the society is bound to execute a joint lease deed in favour of the disputants by reason of membership and family arrangement, then the dispute does touch the functioning of the society. Whether the society is in fact bound, and whether the claim is enforceable, are matters to be decided after evidence. But the jurisdictional objection cannot be accepted merely because the pleadings also involve a family arrangement.

19. As explained in *Bank of India Staff Panchsheel Cooperative Housing Society Limited*, there is a distinction between jurisdiction and maintainability. Jurisdiction and statutory bar are not the same. A plaint can be rejected under Order VII Rule 11(d) only when the bar is clear on the face of the plaint. If the Court has to examine evidence, or if the question is mixed of law and fact, rejection is not the proper course. This principle applies with force here. The petitioners' objection is not founded upon a statutory prohibition appearing plainly from the plaint. It is founded upon a contested understanding of the status of the predecessor and the effect of the society's own resolution. These are not matters that can be disposed of on a bare reading of the plaint.

20. The said distinction becomes important because the petitioners seek rejection not on the ground that the society has no relation at all with the dispute, but on the ground that the rights claimed are concealed behind drafting. Even if that argument is accepted to some extent, it still does not answer the threshold test under Order VII Rule 11. Concealment may be exposed after the parties lead evidence and the Court examines the true character of the claim. It is not enough that the petitioners raise a strong

defence. A strong defence is not the same as a clear bar. The law requires more. The plaint must itself reveal the defect beyond doubt. Here, the plaint rather discloses a document, a society resolution, an associate membership, and a claim for joint lease. Therefore, the matter had to be permitted to go forward.

21. The Trial Court accepted the petitioners' objection in a manner which went too far at the initial stage. The Appellate Court was therefore right in interfering. The order of rejection could not have been sustained because the Court below treated disputed questions as if they were admitted facts. It assumed that the family arrangement was ineffective and that the dispute was outside Section 91. Such conclusions could not be recorded on an application under Order VII Rule 11. The Appellate Court correctly noticed that the Trial Court had erred in law by not confining itself to the plaint averments and the limited scope of the provision.

22. In the totality of the matter, the picture which emerges is this. The petitioners have raised arguable questions on jurisdiction, on the nature of the dispute, and on the effect of the family arrangement. The alleged bar is neither express nor self-evident from the plaint itself. The case therefore does not fall within the narrow limits of Order VII Rule 11(d). The proper course is trial, not rejection.

23. For these reasons, the overall assessment goes against the petitioners. The order passed by the Appellate Court does not suffer from such illegality or perversity as would justify interference in writ jurisdiction. The writ petition, therefore,

deserves to fail. The dispute may proceed before the Cooperative Court in accordance with law, and all contentions of the parties on merits are kept open to be decided on the basis of evidence and final hearing.

24. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

- (i) The writ petition stands dismissed;
- (ii) The judgment and order dated 10 October 2024 passed by the Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Pune in Appeal No. 40 of 2024 is hereby upheld;
- (iii) The order dated 26 April 2024 passed by the Cooperative Court No. 2 at Pune rejecting Dispute No. 88 of 2023 is set aside, and the said dispute is restored to the file of the Cooperative Court for adjudication on merits in accordance with law;
- (iv) It is clarified that all observations made in the present judgment are prima facie in nature and confined to the adjudication of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, and shall not influence the Cooperative Court while deciding the dispute on its own merits;
- (v) All contentions of the parties on merits are expressly kept open;

(vi) The Cooperative Court shall proceed with Dispute No. 88 of 2023 expeditiously and in accordance with law;

(vii) There shall be no order as to costs.

(AMIT BORKAR, J.)