

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.244 OF 2011  
IN  
WRIT PETITION NO.1461 OF 2011**

1. Sheikh Amin Akhtar,  
Flat No.E/70, Ground Floor  
North Bombay Co-op.Hsg.Society Ltd.  
Juhu Tara Road, Juhu, Mumbai-400 049.  
2. Kayur Shastri, R/o.Flat No.702,  
Suyog Darshan Co-op.Hsg.Society  
Plot No.5, S.No.83, Off.Yari Road, Versova,  
Andheri (W), Mumbai, presently residing at  
Moti Pandya Khadaki, Near Golwad Gate,  
Navsari, Gujarat.

Appellants

versus

1. The State of Maharashtra  
2. Suyog Darshan Co-operative Housing Society Ltd.  
Through its Chairman, Plot No.5, S.No.83,  
Off.Yari Road, Versova, Andheri (W), Mumbai.  
3. Sunil Chalke, Secretary,  
Suyog Darshan Co-operative Housing Society Ltd.  
Plot No.5, S.No.83,  
Off.Yari Road, Versova, Andheri (W), Mumbai  
4. Gautam Hiranandani, Court Receiver,  
Flat No.3, Ground Floor, Nutx Co-op. Hsg.Society Ltd.  
Saraswat Colony, Niwad Road,  
Behind St.Lawrence School, Santacruz (W),  
Mumbai-400 054.  
5. Mohan R.Kubal, 14, 338, Sector 7,  
CGS Colony, Antop Hill, Mumbai-400037.  
6. Snehalata Jaiswal, G.F.002,  
Parasrampuria Tower no.5, Off.Link Road,  
Lokhandwala Complex, Andheri (West),  
Mumbai-400 053.

Respondents

Mr.Mandar Soman for Appellants.

Mrs.M.P.Thakur, AGP, for Respondent no.1 State.

Mr.Vinod L.Desai for Respondent no.5.

**CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.**

**Date of Reserving the Judgment : 9<sup>th</sup> January 2026  
Date of Pronouncing the Judgment : 11<sup>th</sup> February 2026**

**JUDGMENT (Per : Aarti Sathe, J.) :-**

1. This Letters Patent Appeal is directed against the judgment and order dated 13<sup>th</sup> June 2011 (hereinafter referred to as the **impugned order**) passed by Learned Single Judge in Writ Petition No. 1461 of 2011 disposing of the Petition filed by Appellant No. 1 on the ground that the order which was under challenge in the said Petition in no way prejudices Appellant No. 1, and hence the said Petition was not entertained with the findings made therein (which are reproduced later at the relevant paras). By the impugned order, Appellant No. 1 was directed to pursue his rights in respect of the flats in dispute, in the appropriate/competent forum and raise all contentions therein regarding his rights, title, and interest in the said flats.

2. This is a classic case where the rights of the legitimate/rightful owner of the flat/premises have been grabbed on account of the perpetration of illegalities on the part of Appellant No.1, which has caused extreme hardship and grave prejudice to Respondent No. 5. Respondent No. 5, who is a government employee and was rightfully entitled to Flat No. 702, and had spent his entire life savings to purchase the same has been dragged into this unfortunate litigation for the last several years only on account of the illegal and mischievous means adopted by Appellant No.1, who does not have any legal right insofar as the said flat is concerned. This to our

mind is a very unfortunate situation and an abuse of the machinery of Courts which has been adopted by Appellant No.1.

3. Briefly the facts of the case are as follows:

i. Appellant No. 1 is a citizen of India and claims to be the owner of flats bearing numbers 701 and 702, (jointly admeasuring 1500 sq. ft.) on the seventh floor of the Respondent Society. Appellant No. 2 is a person of Indian origin holding British citizenship and PIO card and is a licensee of Flat No. 702, which Appellant No. 1 claims to be the owner of since 5th November 2009.

ii. Respondent No. 2 is the registered Society (hereinafter referred to as the "Respondent Society"), namely Suyog Darshan Co-operative Housing Society Limited, (registration number BOM/WK/W/HSG/TC 7028 of 1992-93), where the aforesaid flats bearing numbers 701 and 702 are situated. These flats have been allocated to the aforesaid Respondent Society by the Collector of Mumbai, Suburban District, Government of Maharashtra. Respondent No. 3 is the Honorary Secretary of the Respondent Society. Respondent No. 4 is the Court Receiver appointed by Respondent No.1 in Appeal No. 34/2009, vide order dated 30<sup>th</sup> November, 2010. Respondent No. 5 who was earlier allotted Flat No. 402 in the Respondent Society and to whom Flat No. 702 has been allocated is the person who claims to be entitled to the said flat. Respondent No. 6 is the previous owner of Flat No. 701 from whom Appellant No. 1 had purchased the aforesaid flat which Appellant No. 1 claims measured 1500 sq. ft.

iii. On 17<sup>th</sup> August 2001, Respondent No. 6, the previous owner i.e. Mrs. Snehalata Jaiswal was allotted Flat No. 701 in the Respondent Society. On

23<sup>rd</sup> August 2001, an NOC was issued in favour of Respondent No. 6 i.e. Mrs. Jaiswal, whereby she was allowed permission to obtain loan from the Corporation Bank, Mahim Branch by mortgaging Flat No. 701.

iv. On 2<sup>nd</sup> March 2004, the Respondent Society had issued a letter and two receipts confirming receipt of all the outstanding dues from Respondent No. 6 and directed the site in charge at the Society premises to hand over keys and possession of Flat No. 701 to Respondent No. 6.

v. It is Appellant No. 1's contention that on 3<sup>rd</sup> September 2001, Respondent No. 6 had misplaced the original letter of allotment and the share certificate. Therefore, a public notice was issued by Respondent Society on 3<sup>rd</sup> September 2001 and thereafter a duplicate share certificate and letters of allotment were issued to Respondent No. 6.

vi. On 17<sup>th</sup> December 2003, the office of the Collector, Mumbai Suburban District had recorded that the Respondent No. 6 is eligible to become a member of the Respondent Society and has approved her membership in the Respondent Society.

vii. On 31<sup>st</sup> December 2007, Appellant No. 1 obtained the approval from the office of the Collector, Mumbai Suburban District for the transfer of Flat No. 701 from Respondent No. 6 to Appellant No. 1 and for including Appellant No. 1 as a member of the Respondent Society.

viii. On 16<sup>th</sup> January 2008, Appellant No. 1 purchased Flat No. 701 from the Respondent No. 6 by an agreement of even date bearing registration No. BDR/15/437/2008 after clearing the pending dues owed to the Corporation Bank

and after obtaining its NOC for the said sale and conveyance.

ix. On 5<sup>th</sup> June 2008 and 25<sup>th</sup> June 2008, Appellant No. 1 paid a total sum of Rs. 3 lakhs towards maintenance charges to the Respondent Society through two cheques, but the Respondent Society failed to issue due receipts in respect thereof is the contention of Appellant No. 1. Thereafter, sometime in July 2009 and November 2009, Appellant No. 1 issued two legal notices of even date to the Chairman and Secretary of the Respondent Society and to the Deputy Registrar of Cooperative Societies, K- West Ward, Bandra East, Mumbai – 400051 asking for the receipts and for certain other documents and all of these persons have acknowledged receipt of the said notices but have not sent a reply.

x. It is Appellant No. 1's contention that Appellant No. 1 undertook interiors and repair work of the entire Flat No. 701 admeasuring 1500 sq.ft and thereafter separated it into two flats which would become Flat Nos. 701 and 702. It is the contention of Appellant No. 1 that Appellant No. 1 retained the two-bedroom portion i.e. Flat No. 701 for his personal use and gave Flat No. 702 on leave and license basis.

xi. Further, it is the contention of Appellant No. 1 that on 15<sup>th</sup> May 2008, Appellant No. 1 gave Flat No. 702 under a Leave and License Agreement dated 15<sup>th</sup> May 2008 to one Hemant Arya for 11 months from 15<sup>th</sup> May 2008 to 14<sup>th</sup> April 2009. The said Hemant Arya was also granted permission for parking his vehicle in the premises of Respondent Society who had acknowledged receipt of the charges from the said licensee of Flat No. 702.

xii. Further, on 5th November 2009, Appellant No. 1 gave Flat No. 702

on leave and license basis under a registered Leave and License Agreement of even date for 11 months from 15<sup>th</sup> November 2009 to 14<sup>th</sup> October 2010, to one Mr. Kayur Shastri i.e. Appellant No. 2 which was extended for a further period of 11 months from 15<sup>th</sup> October 2010 to 14<sup>th</sup> September 2011. It is Appellant No. 1's contention that post purchase of the flat in 2008, which Appellant No. 1 claims is a composite flat comprising Flat Nos. 701 and 702 being the disputed flats, no dispute was raised by the office bearers of the Respondent Society in respect of the right or title of the Appellant No. 1 in respect of the said flats. It is only sometime later that the Respondent No. 3, i.e, the Secretary of the Respondent Society is stated to have raised illegal and untenable claims for payment of substantial sums of money in cash from Appellant No. 1 is the contention of the Appellant No. 1.

xiii. Respondent No. 3 also lodged false police complaints as contended by Appellant No. 1, against Appellant No. 1 at Versova police station which were not acted upon and/or not accepted. Appellant No. 1 has stated that he also was called upon to hand over a copy of his registered sale deed dated 16<sup>th</sup> January 2008 to Respondent No. 3 in the said police station, which Respondent No.3 has acknowledged as per Appellant No. 1.

xiv. Sometime in 2008-2010, Appellant No. 1 obtained electricity connection, gas connection, telephone connections, etc. for the said flats and the Respondent Society and Respondent No.3 were fully aware of the ownership of the said flats vesting with Appellant No. 1 and that Appellant No. 2 was occupying Flat No. 702 as a licensee of Appellant No. 1.

xv. It is also Appellant No. 1's contention that Appellant No. 1's brother

is the owner of Flat No. 705 in the Respondent Society and he has also paid the maintenance charges to the Respondent Society and that the Respondent Society and its office-bearers are fully aware of the ownership of Appellant No. 1's brother of Flat No. 705.

xvi. Sometime in 2010, Appellant No. 1 was made aware by the security person of the Respondent Society that some people were allegedly trying to break the locks of the said flats. It is Appellant No. 1's contention that since he was traveling out of Mumbai, he requested his brother to verify the aforesaid situation. It is on Appellant No. 1's brother reaching the premises that he found out that the said flats had been broken into by certain people and the Court Receiver had taken possession pursuant to the order dated 30<sup>th</sup> November 2010 passed in Appeal No. 34 of 2009 filed by one Smt. Madhuri Pal.

xvii. A copy of the order dated 30<sup>th</sup> November 2010 passed by the Cooperative Appellate Court was handed over to Appellant No. 1 whereby the Court Receiver was appointed to take forcible possession of Flat No. 702. It is Appellant No. 1's contention that it is only after this incident that Appellant No. 1 came to know about the pendency of some legal proceedings before the City Civil Court and the Maharashtra State Cooperative Appellate Court at Mumbai (hereinafter referred to as the "Appellate Court") in Appeal No. 34 of 2009, wherein the order dated 30<sup>th</sup> November 2010 was passed appointing the Court Receiver.

xviii. Appellant No. 1 further came to know that sometime in 2004, the new office-bearers of the Respondent Society had filed Suit No. 5751 of 2004 before the Bombay City Civil Court at Greater Bombay against the original owner

i.e. Respondent No. 6, her family members and their driver Mr. Liaqat Ali, questioning their ownership of Flat No. 701. In 2008, a notice of motion filed by the Respondent Society in the aforesaid suit was dismissed, which the advocates for the original owner, Respondent No. 6, had intimated to the Senior Inspector, Versova Police Station. Further, Suit No. 5751 of 2004 was dismissed on 14<sup>th</sup> June 2010.

xix. On 21<sup>st</sup> January 2009, an order of even date was passed by the Learned Fourth Judge Cooperative Court at Mumbai in Case No. IV/ 294/2005 on the dispute raised by Respondent No. 5 i.e., Mohan R. Kubal in the aforesaid forum. By way of the said order dated 21<sup>st</sup> January 2009, the Respondent Society and one Smt. Madhuri Pal residing in Flat No. 402 were directed to handover the vacant and peaceful possession of Flat No. 402 or any other flat of the same area in the Respondent Society within 2 months from the date of the said order to Respondent No. 5.

xx. Being aggrieved by the aforesaid order dated 21<sup>st</sup> January 2009 Smt. Madhuri Pal filed an appeal bearing No. 34/2009 before the Appellate Court wherein the following order dated 11.06.2010 was passed-

*“1) Appeal No.34 of 2009 shall stand disposed of in the following manner:*

*2) The respondent No.2 herein i.e. society Suyog Darshan Co-operative Housing Society Ltd., situated at. Building No.5, Survey No.83 of Yari Road, Varsova Andheri (W) Mumbai 400061 is directed to handover vacant and peaceful possession of Flat No.702 to the respondent No.7, Mir. Mohan R Kubal immediately on receipt of this order or in any case within a week from the date of communication of this order.*

*3) The Respondent No. 1 shall pay maintenance and other charges of the society w.e.f. the date on which vacant and peaceful possession is handed over to him of Flat No.702 to the society regularly.*

*4) In case, society fails to handover vacant and peaceful possession of Flat No.702*

*as per clause-2 hereinabove and within the time stipulated hereinabove, the Court Receiver, High Court, Bombay shall stand appointed as Receiver in respect of this Flat No.702 with all powers under Order XXXIX Rule 1 of Civil Procedure Code and the Court Receiver shall take possession from the society and hand it over to respondent No.1 within seven days of the date of taking over possession from the society: After the Receiver hands over the possession of the Flat No. 702 to the respondent No.1, the Court Receiver shall, stand discharged without passing any accounts and subject to payment of the cost Receiver commission charges.*

*5) The Court Receiver shall make formal inventory of the articles and things lying and being in Flat No.702 at the time of taking the possession from the society, if any articles are lying there.”*

(emphasis added)

xxi. It was further directed that in the event the Respondent Society failed to handover such possession, then a Court Receiver would be appointed to take possession of the said flats. It is Appellant No. 1's contention that he was not made a party to the said appeal and no notice was issued to him or any hearing given to him at the time of hearing the said appeal.

xxii. On 28<sup>th</sup> October 2010, Court Receiver was appointed pursuant to the order dated 11<sup>th</sup> June 2010. The Court Receiver made a report that the said flat was in the possession/ occupation of some unknown persons. It is Appellant No. 1's contention that the Appellate Court still did not issue any notice to Appellant No. 1 before ordering possession by forcible means under the order dated 11<sup>th</sup> June 2010.

xxiii. Further, on 30<sup>th</sup> November 2010, the Appellate Court passed further orders pursuant to the order dated 11<sup>th</sup> June 2010 referred to in para (xx) hereinabove, again appointing another Court Receiver (Respondent No. 4) for taking possession of the said flat i.e. Flat No. 702 through forcible means and if required, to take assistance of the Senior Inspector, Versova Police Station. It is Appellant No. 1's contention that even at such point of time, no notice was issued

to the unknown persons reported to be in occupation of the said flat i.e. Flat No. 702.

xxiv. On 6<sup>th</sup> December 2010, pursuant to the order dated 30<sup>th</sup> November 2010, Respondent No. 4 submitted a further report setting out the inventory of articles of "other persons" lying in the said flat i.e. Flat No. 702.

xxv. Another order was passed dated 6<sup>th</sup> December 2010 directing Respondent No. 4 to move all articles in Flat No. 702 and also to seal the said premises.

xxvi. It is Appellant No. 1's contention that none of the above actions, notices, / orders which have been passed by the Appellate Court have been passed by giving any notice to Appellant No. 1.

xxvii. Sometime in December 2010, Appellant No. 1 obtained all the copies of the relevant documents and filed M.A. 151/2010 before the Appellate Court, for the relief prayed therein, including for recall, review and/or amendment of the orders and directions in the orders of the Appellate Court dated 11<sup>th</sup> June 2010, 28<sup>th</sup> October 2010, 30<sup>th</sup> November 2010, and 6<sup>th</sup> December 2010 praying that Appellant No. 1 be put in possession of Flat No. 702, i.e. the said flat.

xxviii. It is Appellant No. 1's contention that the Appellate Court on 22<sup>nd</sup> December 2010 rejected M.A. 151 of 2010 filed by Appellant No. 1 on untenable grounds and without affording a proper hearing and Appellant No. 1 was permitted to remove the articles kept under lock-in seal from Flat No. 702.

xxix. It is Appellant No. 1's contention that the order of the Appellate Court illegally dispossessing Appellant No. 1 from his own flat amounted to the

Appellate Court deciding on issues of ownership, title and rights of possession in an appeal which did not pertain to the Flat Nos 701 and 702.

xxx. Being aggrieved by the order dated 22<sup>nd</sup> December 2010, Appellant No. 1 filed Writ Petition No. 1461 of 2011 which came to be disposed of by the impugned order dated 13<sup>th</sup> June 2011 which is challenged in the present Letters Patent Appeal.

xxxi. On 30<sup>th</sup> August, 2011, a Division Bench of this Court admitted the present Letters Patent Appeal. Further an ad-interim order was also granted pending the hearing of the present Letters Patent Appeal. Thereafter, this matter came up before this Court on several occasions and the Appeal was dismissed for non-prosecution on 14<sup>th</sup> February, 2024 by this Court. However, the Appeal was restored by order of this Court dated 6<sup>th</sup> September 2024.

4. It is in the backdrop of these facts, the issue which has fallen for consideration in the present appeal is whether the Learned Single Judge was in any error in passing the impugned order and disposing of the Petition with the findings that Appellant No. 1 could pursue appropriate remedies before the appropriate/competent forums.

5. We have heard Mr Mandar Soman for Appellant No. 1, Mrs M.P. Thakur, AGP for the State, i.e., Respondent No. 1 as well as Mr Vinod L. Desai for Respondent No. 5. We have perused the papers and proceedings and the impugned order passed by the Learned Single Judge.

6. Mr. Mandar Soman, Learned Counsel for Appellant No. 1 contends that the impugned order has to be quashed and set aside inasmuch as the said order has not

taken into consideration that the entire trial before the Appellate Court was vitiated by fraud and orders were passed in violation of the principles of natural justice. The primary contentions of Learned Counsel, Mr. Soman can be summarised as below:-

i. Appellant No. 1 was not a party to the dispute before the Cooperative Court and Appellate Court and hence passing an order affecting the rights of Appellant No. 1 is in violation of the principles of natural justice and therefore the impugned order in the Writ Petition needs to be quashed and set aside.

ii. Further an unfair trial and a fair Appeal does not cure the defect of principles of natural justice being denied in the Trial Court.

iii. The order before the Appellate Court was obtained by the Respondent Society by fraud, as it suppressed the dismissal of Suit No. 5751 of 2004, claiming ownership of Flat No. 701, and hence the orders before the Appellate Court was obtained by fraud.

7. On the other hand, Learned Counsel, Mr Vinod Desai on behalf of Respondent No. 5 contended that the impugned order passed by the learned Single Judge was a well-reasoned order and passed on an appreciation of the correct facts and legal position.

8. He has further submitted that disputed questions relating to the title of property cannot be gone into or adjudicated in Writ proceedings and therefore the impugned order has to be upheld. Learned Counsel, Mr Thakur on behalf of Respondent No. 1 State has supported the submissions made by Learned Counsel on behalf of Respondent No. 5. They also adopted submissions made by them in

the respective affidavits filed by them in Writ Petition No. 1461 of 2011.

9. He further submitted that in the affidavit of rejoinder filed by Respondent No. 5 in Writ Petition No.1461 of 2011, a copy of approved plan of the Respondent Society had been produced, which shows the dimensions of the two flats as follows:-

Flat No.	Living Room	Bed-Room	W.C.	Kitchen	Toilet	Carpet Total	Built-up Total
701	14'6" x 136" = <b>195.75</b>	10'3"x21' 6 = <b>220.38</b>	3'6"x7'6" = <b>26.26</b>	76"x11 = <b>82.50</b>	7x 41 = <b>28</b>	<b>552.89</b>	<b>663.46</b>
702	10'x 11'3" = <b>112.50</b>	10'3"x24" = <b>246</b>	3'x 4' = <b>12</b>	7'x 10' = <b>70</b>	4' x 4' = <b>16</b>	<b>456.50</b>	<b>547.80</b>
				<b>GRAND TOTAL</b>		<b>1009.39</b>	<b>1211.26</b>

10. We have heard the contentions on behalf of Appellant No. 1 and the Respondent State and Respondent No.5. We have also perused the papers, proceedings and the impugned order and we will proceed to decide the present Letters Patent Appeal.

11. From a reading of the proceedings filed before the Cooperative Court and the Appellate Court and the findings therein, it is a clear case that Appellant No. 1 was not in a position to establish his ownership, title or rights in respect of Flat No. 702. In fact, the learned Single Judge in the impugned order has very categorically held that while dealing with the applications filed therein, Appellant No. 1 claims to be the owner of Flat No. 702, but the sale deed filed by him shows that he is the owner of Flat No. 701. The learned Single Judge has also held that the dispute is

primarily regarding Flat No. 702, and there are several disputed questions arising therefrom which could not be decided before the learned Single Judge. The learned Single Judge in fact has held that the remedy lies elsewhere and recourse may be taken to such proceedings as are permissible in law before the appropriate forum, including the allegations of fraud etc., which Appellant No. 1 seeks to canvass before this Court. However, it appears to us that Appellant No. 1 does not want to avail of the appropriate remedy in as much as he himself does not have any documents to show his right, title and interest in Flat No. 702. It is in fact our strong view that to beat the illegality which Appellant No. 1 seeks to perpetrate by filing multiple litigations and by not having a shred of evidence in his favour to establish his right, title and ownership in respect of the said flat, Appellant No. 1 has chosen to pursue this Letters Patent Appeal. It is also our view that Appellant No. 1 has throughout the proceedings not come with clean hands before any of the forums and also not before this Court.

12. It is clear from the findings rendered by the Cooperative Court and the Appellate Court that the dispute was in respect of Flat No. 702 in respect of which Appellant No. 1 did not have any document to prove his right, title and interest. Further, it is clear from the sale deed dated 16<sup>th</sup> January 2008 that the sale deed which was entered between Appellant No. 1 and Respondent No. 6 was only in respect of Flat No. 701. Also, the allotment letter dated 17<sup>th</sup> August 2001 and the share certificates issued in favour of the Respondent No. 6 clearly reflect that the same were in respect of Flat No. 701. Though Appellant No. 1 has contended that he purchased Flat No. 701 which was of 1,500 sq. ft. and thereafter divided it into

two to make it as Flat No. 701 and Flat No. 702, this contention of Appellant No. 1 is not supported by any documentary evidence which was shown both before the Cooperative Court and the Appellate Court. In both the orders dated 11<sup>th</sup> June 2010 and 22<sup>nd</sup> December 2010 passed by the Appellate Court on an appreciation of the facts of the case the following categorical findings are made:

**Order dated 11<sup>th</sup> June 2010**

*“7) As such, two affidavits came to be filed, by the society. The first affidavit came to be filed on 9<sup>th</sup> September 2009 and second came to be filed on 9<sup>th</sup> February 2010. On perusal of both these affidavits it can readily be inferred that, there are three flats bearing No.701, 702 and 705 are lying vacant as per their society's record. It is submitted by Mr. Vatkar that, the original disputant, who is respondent No.1 herein, was allotted a flat admeasuring area of 650 sq. ft. and therefore, as per the Award passed by the trial Court and giving him option to select any other flat lying vacant of equivalent area, the respondent No.1 herein has expressed before this Court that, he is ready and willing to accept vacant and peaceful possession of Flat No.702 which is admeasuring 650 sq. ft., as per the affidavit dated 9 September 2009 filed by the society.*

*8) The respondent No.1 further fairly stated before this Court and agreed to file an undertaking to indemnify society, respondent No.2, in case any claimant comes forward in respect of Flat No.702 in future.*

*9) This attempt was done by the respondent No.2 for the simple reason that in the first affidavit dated 9<sup>th</sup> February 2010, it is stated by the society that, there is pending litigation in respect three flats mentioned in that affidavit, which included Flat No. 702 of which the respondent No. 1 has chosen to accept in lieu of his claim for Flat No.402. In the same affidavit dated 09/02/2010, in Para.5 thereof, the society has given a clear option to this respondent that, he can choose anyone of the flat out of the four viz. three mentioned in affidavit dated 9<sup>th</sup> September 2009 and one flat, which was subject matter of the dispute before the trial Court i.e. Flat No. 402.*

*10) Though the society is not present today before this Court, I have no hesitation to accept the claim put forward by the present respondent No. 1 to exercise his right in pursuance of an Award, dated 21/01/2009 more particularly when it is in consonance of the Award.*

*11) Mr. Vatkar further stated that, even as on today, according to the knowledge of the Respondent No. 1 herein, who is present before the Court, Flat No.702 is lying vacant and no one is in occupation thereon.”*

**Order dated 22.12.2010**

*11) The applicant is claiming to be the owner of flat no.702, but sale deed filed by him shows that, he is owner of flat No.701. Nobody is concerned with flat no.701, because here the dispute is only for flat no. 702 and therefore it is not necessary*

for the Court to consider the ownership documents filed by the applicant in support of his ownership to flat no.701 unless those are relevant to decide as to whether he is also owner of flat no. 702. Except mentioning in the sale deed that flat no.701 of having 1500 sq.ft. the applicant has not filed a single authenticated document to show that flat no.701 is of 1500 sq.ft. and except in the sale deed no other document filed by the applicant this area is mentioned. In support of his contention, applicant could have filed building plan of the society. When it is his case that, by division of flat no.701, he created two flats 701 and 702 of 850 sq.ft. and 650 sq. ft. then he is supposed to show as to whether he has obtained such permission from the society and he has to shown to be a member of flat no.702. According to him the flat no.702 come into existence after purchase by him on 16-1-2008. But in the year 2005, Secretary of the society filed F.I.R. against Jaiswal and his family including Sehalata Jaiswal by making allegations that by fraud and cheating and by creating false documents they shown allotment of 5 flat in their name, in the name of their relatives, in the name of their servants like driver and in this F.I.R. there is reference of flat no.701 and 702, So when flat no. 702 was in existence in the year 2005, how this applicant can make division and created the same in the year 2008. So it can be said that, applicant is coming with false case of mentioning division of flat no.701 of 1500 sq. ft. into two flats bearing nos.701 and 702. (Copy of the F.I.R. is filed by the Court Receiver in that main proceeding of Appeal no.34/2009. ) In this F.I.R. Snehata Jaiwal shown to be of flat no.702 then again question arise how she sold flat no. 701. But here we are not concerned with this aspect. So in this case, all these questions are to be decided whether, flat 'no.701 is having a original area of 1500 sq.ft.? Whether applicant made division of it into two flats? whether Jaiswal family by cheating created false documents and such allotment of 5 flats including flat no.701 etc.? Further it is also to be decided as to who cheated to whom, who committed the fraud, whether office bearers of the society, or applicant or Snehata Jaiswal, all these questions cannot be decided in this application while passing interlocutory order and therefore it is proper course for the applicant to take appropriate proceeding before appropriate forum. I have already pointed out that, application itself is not maintainable as review application. This Court passed order time to time which can not be set aside or reviewed in this application unless applicant established his ownership over the flat no. 702 in appropriate proceeding.

12) Now coming to the aspect of interim relief that Licensee Kayur Shastri be permitted to take his pass- port and other belongings from that flat no.702. This Court cannot recognize licensee who has not filed the affidavit to show that he is residing there and his articles and belongings are lying in that flat. During the course of arguments Adv. for the applicant submitted that, in that room some articles are of the applicant and some are of his licensee. So it is also not possible to separate all these articles. The Ld. Advocate for respondent's no.1 suggested that, applicant can take all the articles from that room and vacate that room which includes the articles of licensee also. I also fully agreed with this course of action. When applicant tried to falsely establish his right over that flat, he cannot only seek part relief returning some articles of his licensee and detain the room thereby respondent no. 1 will not in position to use that room for a long period. Merely from the fact that, notice of taking possession was not pasted on the flat does not give right to these parties and to claim certain interim relief, who fails to establish their ownership on the flat no.702. That apart, it is fact that Court Receiver visited the premises twice so, when watchman can informed last visit of the Court Receiver to the applicant, watchman could have also inform earlier visit also. So if applicant want interim relief which is equitable relief, he should have fairly show his readiness to take all articles from that room of which at present he has no legal right. So in facts and circumstances of the

*case, this Court can return all the articles to the applicant which include article of his of his Licensee subject to condition. This Court is not inclined to return article in peace mill as prayed by the applicant. So I proceed to pass the following order.*

*ORDER*

1. *M.A.no.151/2010 is partly allowed subject to condition that,*

*A. The applicant respondent no.4, Shri Shaikh Amin Akhtar only entitled to take back the belonging of his licensee, Shri Kayur Shastri, subject to condition that, Shri Shaikh Amin Akhtar should take back all the articles/belonging, found in flat no.702 and at present kept in one room of that flat no.702 and completely vacate that room of flat no.702. If applicant is ready to take back all the articles from that room, he should make application to that effect to this Court. So that Court can pass necessary order on it.*

2. *Applicant should note that, if no-body come forward for taking possession of the article found in that flat kept in that room, within the reasonably period of next 75 days, those articles will have to dispose of in accordance with the law, as per previous order of this Court dt.6-12-2010.*

3. *In this way M.A. is disposed off.*

4. *No order as to costs.”*

(emphasis added)

13. It is therefore clear that in both the orders, the Appellate Court has held that Appellant No. 1 did not have any document to prove his ownership insofar as Flat No. 702 is concerned.

14. It is also pertinent to note that the claim of Respondent No. 5 which was agitated before the Appellate Court was based on the fact that he was allotted Flat No. 301 and instead of Flat No. 301, he was given Flat No. 402, which was illegally occupied by one Smt. Madhuri Pal against whom Respondent No. 5 sought to file proceedings in the Cooperative Court. In that order too, the Appellate Court on the basis of affidavits filed by the Society dated 9<sup>th</sup> September 2009 and 9<sup>th</sup> February 2010 has ordered that instead of Flat No. 402, the alternative flat, i.e., Flat No. 702 be given to Respondent No. 5 in as much as those flats were lying vacant. It is only thereafter that Appellant No. 1 sought to move an application to seek review of the said order.

15. In the said review order also, the Appellate Court has held that Appellant No. 1 did not have any right insofar as Flat No. 702 is concerned. On perusal of all the records as filed before this Court, we have not come across a single document which establishes the ownership of Appellant No. 1 in so far as the alleged Flat No. 702 is concerned. We are also inclined to hold that Appellant No. 1 is trying to use all kinds of sham methods to assert his rights and in fact it is because of his illegal occupation of the said flat that the Respondent No. 5 has been without a flat in the Respondent Society.

16. It is also one of the conditions of the Respondent Society that the allotment of flats has to be made to government employees, which Respondent No. 5 fulfils. However, Appellant No. 1 is not a government employee and is a businessman whose bona fides also are not clear. We are further inclined to hold that even the purchase made from Respondent No. 6, who was the original owner, also seems to be like a sham transaction in as much as there is no evidence to hold that she was also a government employee. In fact, the Respondent Society had filed Suit No. 5751 of 2004 before the City Civil Court alleging that Respondent No. 6 had also obtained the flats by indulging into fraud/unethical manner.

17. Further, we are also of the opinion and view that the Leave and License agreements dated 15.05.2008 and 05.11.2009 which have been entered into by Appellant No. 1 with the respective licensees are only an attempt being made to show or to try and perfect a title which never existed or which was never there in so far as Appellant No. 1 is concerned.

18. These seem more as an afterthought and a cooked-up story and all these

factual aspects have been considered by the Appellate Court. The Court Receiver had also been appointed vide those orders and possession was taken.

19. We are of the view that Appellant No.1 is shy of approaching the appropriate forums and taking appropriate orders in so far as his title is concerned in as much as the very basis on which he makes such a claim is false and without any iota of truth.

20. Therefore, looked from any angle, Appellant No. 1 does not have any case insofar as the present Letters Patent Appeal is concerned.

21. We also go a step further in holding that Appellant No. 1 by adopting these mischievous and illegal methods is only trying to dispossess the actual bonafide owner of the flat, i.e., Respondent No. 5.

22. In the writ petition in question filed by the appellant (Writ Petition No.1461 of 2011), the Learned Single Judge after looking into the facts of the case and the records passed the impugned order, which reads thus: -

*“1. After having heard the learned counsel appearing for Petitioners and perusing with her assistance the order dated 22.12.2010, I am of the view that there is no necessity to interfere therewith.*

*2. Misc. Application No.151/2010 was preferred by Sheikh Amin Akhtar who is the Petitioner No. 1 before me. The Petitioner No.1/ original Applicant, sought review/recall of the orders dated 11.06.2010, 28.10.2010, 30.11.2010 and 06.12.2010. The Court below, while dealing with this application, has very clearly held that the Petitioner No.1/ original Applicant claims to be owner of Flat No.702, but the sale deed filed by him shows that he is owner of Flat No.701. The dispute is about Flat No.702. The Society states that there was division of these two flats. However, the Court below in paragraph No.11 of the order has held that there were several questions which have been raised on account allegations made by the parties. These allegations and questions arising there from cannot be decided in the application which was preferred by the Petitioner No.1. For him the remedy lies elsewhere and the Court below opined that he must take recourse to such proceedings as are permissible in law before the appropriate forum. The Court cannot assist him in review jurisdiction.*

3. *In such circumstances, there is no need to interfere with such an order because if the Petitioner No.1 is trying to establish his rights over the flat and raises several issues including that of fraud, his remedy is to approach the competent Court for declaring his rights, title and interest. With the clarification that is given by the Co-operative Appellate Court in the impugned order and in addition, when I am of the view that none of the observations and findings conclude the issue of Petitioner No.1/ original Applicant's alleged rights in the property, then, all the more there is no reason to interfere in the impugned order. Once the order itself clarifies that the Court cannot deal with the issue of title, then, the Petitionerss are no way prejudiced. With these observations, the petition is disposed of."*

(emphasis added)

23. In our view, this is a clear case of Appellant No. 1 defeating the rights of Respondent No. 5, as he has time and again, despite directions from various courts to vacate Flat No. 702 and no valid title thereto, refused to surrender possession to Respondent No. 5. Despite the order of the Appellate Court dated 11.06.2010 directing Respondent No. 2 to handover vacant possession of Flat No. 702 to Respondent No. 5, Appellant No. 1, has, in blatant disregard for the same, refused to grant possession and has frivolously filed proceedings before this Court to further undermine the rights of Respondent No. 5.

24. We are also inclined to accept the submission made on behalf of Respondent No. 5, who has opposed the present Letters Patent Appeal that the original approved plan of the Respondent Society consisted of Flat No. 701 which was of 600 sq.ft. and not of 1500 sq.ft., as contended by Appellant No. 1. Thus, the contention of Appellant No. 1 that he purchased Flat No. 701 which was of 1500 sq.ft. and later on divided the same into two flats, is a false and bogus contention as urged by Appellant No.1 and is a further attempt made by him to mislead this Court. As per our earlier finding, it is clear that Appellant No.1 has not proved or made out a case in respect of his claim of Flat No. 702 thereby making this case fit

to be dismissed. In view of the aforesaid finding, we are of the opinion that the learned Single Judge, on appreciation of the facts has correctly passed the order and it requires no interference and hence the same is upheld. We are passing these orders in Letters Patent Appeal, and considering that Court Receivers have been appointed on earlier two occasions, and looking at the conduct of Appellant No. 1, we deem it appropriate to pass the following order:-

**ORDER**

- (i) We are not inclined to interfere with the impugned order dated 13<sup>th</sup> June 2011 passed by learned Single Judge on Writ Petition No.1461 of 2011;
- (ii) Considering the peculiar facts of the case, and the Court Receiver was already appointed, it is open for the Respondent no.5 to take appropriate steps to secure the possession of the premises by pursuing appropriate application either in the pending proceedings, if any, or any other appropriate proceedings;
- (iii) The present Letters Patent Appeal is dismissed in view of the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)