

(2025) 06 BOM CK 0114

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition No. 6247 Of 2022

Prabhakar Gangadhar Chimanpure (Dead) Thr. Lrs

APPELLANT

Vs

Sudhir Co Operative Society Ltd., Akola

RESPONDENT

Date of Decision : 16-06-2025

Acts Referred:

Limitation Act, 1963 — Section 14

Maharashtra Co operative Societies Act, 1960 — Section 79(1), 91, 91(1), 92(b), 163

Citation : (2025) 06 BOM CK 0114

Hon'ble Judges : R. M. Joshi, J

Bench : Single Bench

Advocate : S. A. Mohta, V. G. Bhamburkar

Final Decision : Allowed

Judgement

R. M. Joshi, J

1. Amongst other, issue involved in this Petition is as to whether the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Societies Act') is empowered to grant specific performance of contract.

2. By consent of both sides, Petition is heard finally at the stage of admission.

3. This Petition takes exception to the Judgment and order dated 10/3/2022 passed by the Appellate Authority in Civil Appeal No. 10/2021, setting aside the order dated 23/8/2021 passed by the Co-operative Court, Akola in Dispute No. 858/2004

4. For the sake of convenience parties are referred to as Member and Society.

5. Facts as they appear from the record and relevant for the purpose of deciding this Petition are recorded in brief as under :

Prabhakar Gangadharrao Chimanpure is Member of the Society. In or around year 1976 Society had passed resolution proposing sale of adjoining portion of

the plots to its members on payment of consideration as determined then. The members were required to pay the consideration within the stipulated time. Member paid the consideration towards the purchase of the adjoining portion of the plot on 13/6/1977 by paying a sum of Rs.1300/- and balance amount of Rs.1200/- was paid on 8/3/1979. Society has duly accepted the said amounts and issued receipts to that effect.

6. It is a grievance of the Disputant/Member now through his legal that in spite of receipt of total consideration, the Society has failed to transfer the land in question in his favour. Since the requests made by the Member were not considered by the Society, he approached to the Authorities under the Societies Act for the purpose of issuing directions for transfer of the purchased land in his favour. The proceedings initiated in this regard include the complaint to the Secretary, Co-operation, Deputy Registrar, Co-operative Societies, Akola etc.

7. By order dated 25/2/2022 a direction came to be issued by the Authority to the Society for execution of the sale deed. Society, being aggrieved by the said order preferred Writ Petition No. 667/2004. This Petition came to be allowed by order dated 1/3/2004, wherein it is held that a dispute with regard to the transfer of the plot can be filed under Section 91 of the Societies Act before the Co-operative Court. In the meantime, a dispute came to be filed bearing No. 858/2004 before the Co-operative Court, Akola. Society resisted the same. The reply filed before the Co-operative Court in the form of denial. It is also claimed that the claims sought to be made by the Member are beyond limitation and that dispute is not maintainable under Section 91 of the Societies Act. Society also filed counter-claim seeking relief against the Member not to encroach upon the subject land and in alternate it was prayed that if it is found that the Member is in possession of the land in dispute the Society be put back into possession thereof. Issues were framed by the Co-operative Court. Evidence was led by both sides. Co-operative Court decided the said dispute by passing Judgment and order dated 23/8/2021 directing the Society to execute sale deed in favour of Member.

8. Society being aggrieved by the said Judgment and order, preferred an appeal before Co-operative Appellate Court, Mumbai, Bench at Nagpur bearing Appeal No. 10/2021. The Appellate Court reversed the Judgment of the Co-operative Court and dismissed the dispute by passing impugned order. It is held by the Co-operative Appellate Court that the dispute in respect of specific performance of the contract is beyond the jurisdiction of Co-operative Court under Section 91 of the Societies Act to entertain and that only a Civil Suit can be filed seeking specific performance of contract. Being aggrieved by the impugned Judgment and order present Petition is filed by the Member.

9. Learned Counsel for the Member submits that the Appellate Court has committed serious error in ignoring the Judgment and order passed by this Court in Writ Petition No. 667/2004, wherein it is specifically held that the dispute between the parties can be entertained by the Co-operative Court. It is his

submission that the Judgment of the Co-operative Court is contrary to the law laid down by this Court in the case of Sudhir Co-operative Housing Society Limited, Akola V/s Sharada Vinayak Prabhune & Ors. in Writ Petition No. 1884/2019. He referred to the provisions of Section 91 in order to contend that since admittedly the dispute is between the Member and Co-operative Society and the same is touching to the business of the Co-operative Societies, it is maintainable before the Co-operative Court.

10. On the merits of the Petition amongst other submissions, it is sought to be argued that the Appellate Court has failed to take into consideration the pleadings of the parties in proper perspective and the evidence led before the Co-operative Court. It is his submission that the Appellate Court has wrongly reversed the findings recorded by the Co-operative Court and as the findings recorded by the Appellate Court are contrary to the pleadings and evidence on record, the same deserves to be set aside.

11. The learned Counsel for Society supported impugned order. He submits that in Writ Petition No.667/2004 this Court has never directed/granted leave to the Member to file a dispute before the Co-operative Court for specific performance of contract. It is his submission that the Co-operative Court has rightly taken into consideration the position of the law that the suit for specific performance of contract could only be filed before the Civil Court and that there is no question of Co-operative Court having jurisdiction for entertaining such dispute. On merits, it is his submission that since the Member has admittedly not paid the amount of consideration within the stipulated period, he is not entitled to seek sale deed in respect of the subject land. It is his submission that the alleged transaction is of the year around 1974-77 and the dispute filed by the Member is certainly beyond the period of limitation. On merit, it is his submission that the Appellate Court has rightly taken into consideration the pleadings and the fact that the Member has not challenged the subsequent resolution passed by the Society enhancing the amount of consideration towards the sale of the portion of the land belonging to the Society, he could get no right to claim any relief. It is his submission amongst other submissions that for want of any perversity no interference is called in the impugned order.

12. At the outset, it needs to be recorded that there is no dispute about the fact that the Petitioner is Member of the Society. Further though reply before the Co-operative Court filed by Society is in denial, but practically there is no challenge to the fact that a resolution was passed by the Society offering its Members lands subject to payment of particular consideration. Further it is undisputed that Member has paid total consideration fixed of Rs.2500/- on 13/6/1977 and 8/3/1979 and the Society has accepted the same without any demur. Further there is no dispute about the fact that the Member had initiated various proceedings before the Authorities under the Societies Act and that order was passed by the Deputy Registrar issuing directions to the Society for executing the sale deed. Since the directions issued were not complied with, the Authorities

were further moved for relief. It is the Society, who had filed Writ Petition No. 667/2004 against the order passed of directing execution of the sale deed by the Authorities under the Societies Act. This Court allowed the said Petition, however, has held that in the instant case the adjudication of the issue is to be done by the Co-operative Court. This Judgment dated 12/10/2009 passed by this Court has not been taken exception to before the Hon'ble Supreme Court. As such, the Judgment has attained finality and the same binds the parties.

13. At this stage, it would be relevant to take note of Section 91 of the Societies Act, which reads thus :

91. Dispute

(1) Notwithstanding [anything contained] in any other law or the time being in force, any dispute touching the constitution, [elections of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, [to the co-operative Court] if both the parties thereto are one or other of the following :-

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x "

This provision contains non obstante clause as the opening words of the provision indicate that notwithstanding anything contained in any other law for the time being in force, dispute touching the management or business of the Society shall be referred to the Co-operative Court. Thus, in order to constitute an issue which amounts to dispute entertainable by the Co-operative Court, it must satisfy two conditions i.e. the dispute must be between Member and the Society and it amongst other touches to the management or business of the Society.

14. Section 163 of Societies Act, creates bar of jurisdiction of Civil Court in respect of any dispute required to be referred to a Co-operative Court. Thus, once dispute is referable to a Co-operative Court, Civil Court ceases to have jurisdiction to entertain and adjudicate upon such issue/dispute.

15. Here in this case, undeniably the Society had passed resolution for the sale of the land adjoining to the plots of the members for fixed consideration and pursuant to the said resolution consideration amount was paid by the Member and it was accepted by the Society not even without prejudice. The resolution passed by the Society offering sale of the adjoining land to the plot of the member was accepted by the Member and that it becomes an agreement

between them for purchase of the said land. Member pursuant to the said agreement has paid the entire consideration i.e. Rs.2500/-on 13/6/1977 and 8/3/1979. The receipts issued by the Society confirmed the said fact. In order to obtain the decree of specific performant, the Plaintiff is required to plead and prove readiness and willingness to perform his part of contract. Needless to say that strict rules of pleadings as applicable to the civil suit would not apply to the dispute before Co-operative Court. In substance, Member has stated that he has paid full consideration and it is accepted by the Society. Thus, nothing remained to have been performed by the Member under the agreement.

16. Though it is now sought to be argued on behalf of the Society that the amount of consideration was not paid within the stipulated time and hence the Member has no right to seek sale deed and that the sale can be effected only on the basis of subsequent resolution passed by the Society enhancing the consideration amount. Even for the sake of argument it is accepted that there was a time limit stipulated for the payment of the consideration, acceptance of the consideration amount beyond the prescribed time amounts to novation of the contract. The moment Society accepts the amount of consideration without demur or recording acceptance without prejudice, it becomes a new term of the contract between parties. Thus, now it is not open for the Society to claim that since the amount was not paid within the stipulated period, the same disentitles the Member to seek the relief of specific performance.

17. At this stage, it would be relevant to take note of the Judgment passed by the Co-operative Appellate Court in Appeal No. 20/2008 filed by one of the Members of the Society, wherein the payment of consideration after the stipulated date was not considered as an embargo for entitlement of the said Member to get specific performance. This Judgment of the Co-operative Court has been upheld by this Court in Writ Petition No. 1884/2019. In the said Judgment similar issue was raised about the jurisdiction of the Co-operative Court to grant specific performance of contract. This Court in the said Judgment has made following observations :

"5. Insofar as the first contention, that the claim for specific performance, cannot be entertained in a dispute under Section 91 of the MCS Act, is concerned, what is material to note, is that it is an undisputed position that the petitioner is a Society and the respondent No.1 is its member. The petitioner/Society, by a resolution dated 10/02/1980, passed in its AGM had resolved that open space is adjacent to the allotted plots, be allotted to the adjacent plot holders on the rate indicated therein. The dispute filed before the learned Co-operative Court, seeks a relief of enforcement of this resolution passed by the AGM of the petitioner/Society by seeking execution of the sale deed in consonance thereof. A perusal of the judgment of the Co-operative Court, would indicate that all the issues as raised therein from issue Nos.1 to 7 have been answered in favour of the respondent No.1. It is only on issue No.9, the dispute has been rejected accepting the plea that the Co-operative Court, could not entertain a plea for

specific performance. As indicated above, the plea is for enforcement of the resolution dated 10.02.1980 passed by the AGM of the petitioner/Society which is clearly an action, which falls within the expression "Business of a Society" as occurring in Section 91(1) of the MCS Act, as it is not in dispute that it is the business of the Society to lay a layout and allot plots on land to its members. In this view of the matter, I am not inclined to accept the first submission also."

18. This Judgment has attained finality. Apart from this, the provision of Section 91, as indicated above, prevails over any other law for the time being in force. When the statute makes specific provision with regard to the creation of a forum, such forum only would be empowered to decide the dispute. Moreover, Section 163 of the Societies Act, in fact creates an embargo for the Civil Court to entertain an issue in a suit which is referable to Co-operative Court. In any event, a special law/remedy would prevail over the general law/remedy of filing civil suit and not vice versa.

19. A reference also can be made to the provisions of the Arbitration and Conciliation Act, 1996, which permit the parties to enter into an agreement for referring the dispute about specific performance to an Arbitrator. The Hon'ble Supreme Court in the case of Olympus Infrastructure Private Limited V/s Meena Vijay Khetan and others has held that there is no legal bar for an Arbitrator awarding specific performance. The position of law on the point, therefore, is clear to state that in view of Section 91 of the Societies Act there is no embargo for Co-operative Court to decide any dispute between the Member and the Society covered under the said provision and to grant specific performance of contract and that the dispute filed by Member to seek such relief would be maintainable.

20. The findings recorded by the Appellate Court regarding dispute in respect of the specific performance of contract being not maintainable before the Co-operative Court, is perverse and hence deserves to be set aside. It is held that the Co-operative Court has jurisdiction to decide the issue of specific performance of the contract between Member and Co-operative Society.

21. Coming to the merits of the case, the Co-operative Appellate Court has held that the dispute is filed beyond limitation. In the reply Society has raised objection about the maintainability of the dispute on the point of limitation. However, no issue of limitation was framed by the Co-operative Court. Society never objected to non-framing of the same issue nor took exception to the Judgment of the Co-operative Court on this point. However, the issue of limitation was agitated before the Co-operative Appellate Court. The Appellate Court rendered findings that the dispute is beyond limitation.

22. It is held by the Appellate Court that the dispute pertains to the period for years 1974-1976 onwards and that since the dispute has not been filed within a period of six years from the alleged date of agreement in 1974, the same is not maintainable in view of Section 92(b) of the Societies Act. Though the Appellate

Court has recorded the findings with regard to the delay in preferring the dispute, the Appellate Court has ignored the other relevant facts of the case so also the Judgment and order of this Court in Writ Petition No. 667/2004. The facts are so obvious that the same could not have been ignored. In any case, Appellate Court ought not to have assessed pleadings and evidence in strict sense as done in the trial of a civil suit. The course adopted by the Appellate Court to consider the same accordingly has led to miscarriage of justice. The Appellate Court wrongly laid emphasis on technicalities by ignoring the fact that core and material facts are not in dispute or at least cannot be denied by parties.

23. The undisputed facts as they appear from the record clearly indicate that the Member had initiated the proceedings before the Authorities under the Societies Act and one of such order passed by the Assistant Registrar and Divisional Joint Registrar under Section 79(1) of the Societies Act directing the Society to transfer the piece of plot admeasuring 1000 sq.ft. to the Member came to be challenged. While entertaining and deciding the said Petition bearing No. 667/2004 this Court has duly taken into consideration the relevant provisions of the Co-operative Societies Act including provision of Section 91 and has rendered the following findings :

"6. It cannot be disputed that Cooperative Courts were constituted under the Maharashtra Cooperative Societies Act as a substitute for Civil Courts to deal with the matters pertaining to the Cooperative Societies in relation to its business etc.. Section 91 of the Act provides for the jurisdiction of the Cooperative Court and the matters which the Cooperative Court is entitled to adjudicate. The dispute regarding sale or specific performance of contract or conveyance of title is a dispute purely of civil nature and for deciding the rights of the parties in respect of a property dispute, it is a civil court which is the Court of law entitled to adjudicate upon such civil rights of the parties in relation to the properties. Since the Cooperative Court has been made a substitute for Civil Courts, it is the Cooperative Court in respect of the Cooperative societies and its members which performs the job of the Civil Court and it is that court which will have jurisdiction to decide such disputes between the parties. I therefore hold that in the present matter where the grievance of Respondent No. 4 was that the petitioner society itself had passed a resolution to convey the title of the open plot to a member who is holding the adjoining plot and since the society did not comply with the said demand made by respondent no. 4 for transfer of the said plot to Respondent no.4, obviously the dispute arose and the society did not agree to convey the title to Respondent No. 4 for whatever reasons it had, but then it became the dispute in the matter of specific performance of contract since the resolution of society to transfer the said plot to the adjoining owner/member is a matter of agreement between the society and its member.

7. Looking to Section 79(1) of the Act, it is clear that that the Registrar has been given a power or control under Section 79(1), which is purely of administrative nature. In other words, the Registrar is the authority to keep check on the

activities of the society, expenditure and sales & purchase and its assets & liabilities. The submissions made by Mr. Saboo, learned counsel for respondent no. 4 that his case would fall within the meaning of the term "assets and liabilities" of the society is misconceived. At any rate, Registrar who is an authority on administrative side or even may perform quasi judicial functions, cannot usurp the power of a civil court and the functions of the Court of law.

8. In my opinion, directing the society to transfer a plot to its member after making adjudication is a function of the Civil Court and in this case, of a Cooperative Court. The impugned orders made by the Assistant Registrar and the revisional order are therefore clearly without jurisdiction."

24. Thus, it was specifically held by this Court that dispute in the matter of specific performance of the contract since resolution of the Society to transfer the plot is a matter of agreement between them, the dispute would lie to the Co-operative Court. As noted earlier, this Judgment has become final and hence binds the parties as well as to the Courts under the Societies Act. It is painful to note that the learned Judge of the Co-operative Appellate Court has found not even necessary to refer to the said Judgment of this Court in which specific findings are recorded as to the tenability of the present dispute before the Co-operative Court. This Court records displeasure for the Appellate Court ignoring the said Judgment and proceeding further to pass order contrary thereto.

25. The Judgment of this Court clearly indicates that the Member had initiated proceedings under the Societies Act in respect of seeking sale deed of the disputed land before the various Authorities and as held by this Court, the Registrar has no authority to perform the quasi judicial function on administrative side and on that count the order passed by the Assistant Registrar and Divisional Joint Registrar were set aside. It is, thus, clear that the Member was exhausting wrong remedy before the Authority. In such case, provision of section 14 of the Limitation Act would come in play. Admittedly, the dispute has been preferred before the Co-operative Court even before passing of the order by this Court on 12/10/2009 in Writ Petition No. 667/2004. Thus, as on that day cause of action arose for the Member to prefer proceedings under Section 91 of the Act before the Co-operative Court, a dispute was already filed.

26. The learned Appellate Court has ignored the provisions of Section 14 which has square application to the facts of the present case. It is, therefore, held that the dispute raised by the Member is within the limitation and the period, which was spent for agitating the issue before the Authorities not competent, deserves to be excluded from computation of period of limitation.

27. As recorded hereinabove, there is no dispute about the fact that the entire amount of consideration has been paid by the Member to the Society and the same has been duly accepted without recording any objection. Thus, the acceptance of the amount of consideration, even after the stipulated date, amounts to entering into new term of Agreement between the parties. In the

circumstances, it becomes irrelevant as to whether Society passes any further resolution enhancing the amount of consideration. It is sought to be argued on behalf of the Society that transaction is of the year 1974-75 and in the year 2025 the land cannot be sold at the same price. This argument does not hold any water in view of the peculiar facts of this case. Here in this case, Society agrees to sell the land at a particular amount of consideration. Entire consideration amount is accepted. After acceptance of consideration amount, Society refuses/fails to transfer the land in favour of the Member. After accepting the consideration amount there was no reason or justification for the Society not to transfer the plot/land to the Member. Thus, now it is not open for the Society to claim that there is a escalation of price of the land, and therefore, the Member be directed to pay the consideration amount as per the subsequent resolution. Such arguments probably would have been taken into consideration provided the Member had not paid the entire consideration till initiation of dispute or earlier proceeding before other Authorities. Admittedly, the entire consideration has been paid as back in the year 1979. Society has never returned/refunded the consideration amount to the Member. In such circumstances, question of calling upon the Member to pay the additional consideration amount as per the further resolution passed by the Society does not arise.

28. The Appellate Court gave unnecessary weightage to the form and pleadings as if it was dealing a suit as Civil Court. The substance of pleadings and evidence ought to have been considered and non-consideration thereof has led to rendering incorrect findings on facts and in law. In view of the above, it is held that the findings recorded by the Appellate Court are perverse and hence require interference. On the other hand, perusal of the Judgment of the Co-operative Court indicates that all facts and the evidence led before it was duly considered by the said Court while arriving at the findings in favour of the Member. In this regard perusal of the evidence led before the Co-operative Court indicates that there is no dispute made by the Society with regard to the receipt of total amount of consideration from the Member. The only defence of the Society was subsequent resolutions, which has no bearing on the present case. The Co-operative Court had dismissed counter-claim of Society and once it is held that Member is entitled for specific performance, the counter-claim ought to be and rightly not accepted.

29. The Appellate Court went on to make observations about discrepancies in the description of subject land, but has lost sight of the fact that before Co-operative Court no dispute about said property was made. On the contrary, Society had filed counter-claim seeking re-possession of the subject land. In case of any dispute about the property or its area etc., the Society would not have asked possession of the same property. The Appellate Court, therefore, erred in allowing counter-claim in the facts and circumstances of the case.

30. Suffice into to say that the Judgment and order passed by the Co-operative Court is just, legal and proper and there was absolutely no reason for the

Appellate Court to reverse the said findings. As a result of the above discussion, Petition deserves to be allowed. Accordingly, the impugned order dated 10/3/2022 passed by the Co-operative Appellate Court in Appeal No.10/2021 is hereby quashed and set aside. The Judgment and order dated 23/8/2021 passed by the Co-operative Court in Dispute No.858/2004 stands restored.

31. Writ Petition stands allowed in above terms.