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

CIVIL REVISION APPLICATION NO.442 OF 2023

Macrotech Developers Limited

.. Applicant

Versus

Saint Andrews Co-op. Housing Society Ltd. and
Anr.

.. Respondent

.....

- Mr. Amogh Singh a/w. Mr. Akash Gupta i/b. Mr. Jeet Gandhi.
Advocates for Applicant
- Ms. Rashmi Dhongade i/b. Shriram P. Pingle, Advocates for
Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 17, 2026.

P.C.:

1. Heard Mr. Singh, learned Advocate for Applicant and Ms. Dhongade, learned Advocate for Respondent No.1.
2. Present Civil Revision Application challenges order dated 04.01.2023 passed by the Civil Judge, Junior Division, Pune (for short “**Trial Court**”) rejecting Defendant No.1's Application seeking dismissal of Suit under Order VII Rule 11 of Civil Procedure Code, 1908 (for short “**CPC**”).
3. Applicant before this Court is Defendant No.1 before Trial Court, Respondent No.1 is Plaintiff before Trial Court and Respondent No.2 is Defendant No.2 before Trial Court. Hereafter parties are referred to as ‘Plaintiffs’ and ‘Defendants’ for the sake of convenience.

4. Briefly stated, Defendant No.1 is promoter of development project under name and style of Lodha Belmondo bearing registration numbers P52100020156, P52100000182 and P52100000283 pertaining to construction of Tower "A", Tower "E" and Towers "B,C and D" respectively in aforementioned project on land admeasuring 4,90,730 square meters on Gat Nos.205 (p), 221, 225, 226, 227, 228, 229, 230, 231, 232(p), 233(p), 234, 235, 236, 237, 238, 239(p), 240, 241, 242, 242(p), 243, 244, 245, 246(p), 247, 248(p), 249(p), 251(p), 252(p), 253, 254, 255(p), 258(p), 264(p), 265, 267(p), 268(p), 269(p), 270(p), 317(p), 358(p), 359, 380 admeasuring 4,90,730 square meters situated at Village Gahunje, Taluka Maval, District Pune. Plaintiff is a registered Cooperative Housing Society whose members are flat owners in Towers B, C, D, E and F and Villa Nos. 1 to 28 situated in Gat Nos. 252 and 253 of Village Gahunje, Taluka Maval, District Pune which is more accurately demarcated as "The Reserve" within Lodha Belmondo project.

4.1. In or about 2012 – 2013, Defendant No.1 published brochure for Lodha – Belmondo project, began booking of flats in the said project and executed agreements for sale with flat buyers which were executed and duly registered. It is plaintiff's case that the entire suit property was earmarked as "The Reserve". It is Plaintiff's case that Tower Nos.B, C, D, and Villa Nos.1-28 were an integral part of "The Reserve" including Tower Nos. A, E, and F. However the same was not

found in the Agreement of Sale and that the Society and its members would be forming a part of "The Reserve" as well as the Cooperative Housing Society formed under law.

4.2. Defendant No.1's first sanction plan was approved by Defendant No.2 on 04.07.2011. On 24.08.2012, second sanction plan was approved which pertained to construction of 28 villas. Third sanctioned plan dated 30.04.2013 showed construction of 6 buildings along with 28 villas to be part of "The Reserve". Fourth sanction plan dated 01.06.2016 was approved with helicopter landing area as part of the plan, along with non-agricultural orders of the years 2011 - 2014. Fifth sanction plan was approved on 22.06.2018 with specific mention of a clubhouse for members of "The Reserve" as per brochure circulated by Defendant No.1. Sixth sanction plan dated 16.12.2019 contained names of six societies proposed to be formed in "The Reserve" however the 28 villas did not form part of this sanction plan.

4.3. Flat purchasers of Plaintiff – Society received possession of their respective flats in 2017 pursuant to grant of Occupation Certificate by Defendant No.2. Plaintiff formed and registered itself as Cooperative Housing Society in March 2021.

4.4. In or about October 2022, workers of Defendant No.1 forbade members of Plaintiff – Society from entering, using and enjoying the clubhouse, which was at the end of Tower No.26, under the pretext that they were to demolish the same in order to make a

new clubhouse in its place. Defendant No. 1 got seventh sanction plan approved from Defendant No. 2 on 20.09.2021, which showed the clubhouse near Tower No. 26 to be demolished.

4.5. On 07.12.2021, Plaintiff – Society addressed complaint to Defendant No.2 laying out several violations including alteration of internal roads by Defendant No.1 in the said project as development progressed. Defendant No.2 addressed letter to Defendant No.1 directing it to make alternative arrangement for construction vehicles and to submit compliance report in respect of the same.

4.6. On 11.11.2022, Plaintiff filed Regular Suit No.528 of 2022 along with Application seeking injunction under Order XXXIX Rule 1 of CPC, 1908 before Trial Court seeking declaration in respect of clubhouse standing at the rear of Tower No.26 along with injunction to restrain Defendant No.1, its servants and agents from prohibiting entry of Plaintiff - Society's members to the clubhouse at the rear of Tower No.26 and from demolishing and / or erecting additional structures in spite of amendment to original layout and seventh sanctioned plan approved by Defendant No.2. Defendant No.1 filed Application under Order VII Rule 11(d) of CPC, 1908 seeking rejection of plaint on the ground that it was barred by law. Trial Court passed order dated 04.01.2023 dismissing Defendant No.1's application under Order VII Rule 11(d) of CPC, 1908. Hence present Civil Revision Application.

5. Mr. Singh, learned Advocate for Applicant / Defendant No.1 would submit that impugned order is perverse, passed without consideration of settled law and deserves to be dismissed. He would submit that Plaintiff – Society consists of Tower Nos. A, B, C, D, and E. He would submit that Plaintiff filed Regular Suit No. 528 of 2022 before the Civil Judge Senior Division, Pune seeking declaration and injunction qua alleged violation of its rights in respect to the development project undertaken by Defendant No.1.

5.1. He would submit that Defendant No.1 filed say challenging maintainability of the Suit on the ground that jurisdiction of Trial Court is barred under Section 79 of the Real Estate Regulation Act (for short “**RERA**”), as also under Section 149 of the Maharashtra Regional Town Planning Act (for short “**MRTTP**”). He would submit that Section 79 of RERA expressly restricts/ bars jurisdiction of Civil Courts. He would submit that provisions of RERA expressly provide that once a project is registered under the provisions of RERA, any dispute arising thereunder or incidental or ancillary thereto shall lie exclusively before the Competent authority / forum constituted under RERA. He would submit that therefore Civil Court is expressly barred from entertaining such proceedings, much less passing orders or interim orders restricting and restraining the ongoing project which is duly registered under RERA after the enactment of the said statute.

5.2. He would submit that sanction plan approved by Defendant No. 2 is not challenged by Plaintiff whereas Trial Court in paragraph No. 17 has incorrectly observed that Plaintiff has sought a declaration / challenge to the seventh sanction plan dated 20.9.2021. He would submit that Plaintiff is seeking reliefs in respect of Defendant No.1's construction project hence these rights and remedies are covered under RERA and therefore there exists an express bar on jurisdiction of Civil Court to try the Suit proceeding. He would refer to and rely upon decision of Supreme Court in the case of *New Tech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh and Ors.*¹, to contend that RERA is retrospective in application and would be applicable to all real estate projects which have not been granted a completion certificate prior to the enactment of RERA in the year 2017. He would submit that Plaintiff has admitted to getting possession of flats by its members only after 2017.

5.3. He would submit that Section 9 of CPC, 1908 confers exclusive jurisdiction upon Civil Courts to determine all disputes of a civil nature unless the same are barred by statute. He would submit that it is a well-settled principle that bar of jurisdiction of Civil Court is not to be readily inferred and a provision seeking to bar jurisdiction of the civil court requires strict interpretation. He would submit that present Suit is therefore not maintainable and ought not to have been

¹ 2021 SCC Online SC 1044

entertained at all. He would submit that Trial Court failed to consider the bar under RERA as well as the bar under Section 9 CPC. He would submit that on this ground the impugned order dated 04.01.2023 is perverse and passed without jurisdiction and deserves to be set aside.

5.4. He would refer to and rely upon the decision of Supreme Court in the case of *Imperia Structures Ltd. Vs. Anil Patni and Anr.*² to contend that Plaintiff cannot seek remedy or relief under provisions of law which expressly bar jurisdiction of civil court and therefore Plaintiff cannot seek its remedy in Civil Court and can only seek the same before RERA Tribunal or the Consumer Redressal Forum constituted under the Consumer Protection Act. He would submit that Plaintiff is guilty of *suppressio veri suggestio falsi* since it has failed to disclose prior litigation filed by the Society for the same cause of action under the Consumer Protection Act before National Consumer Redressal Forum, New Delhi. Hence he would submit that present suit suffers from the vice of *res judicata* and on this ground itself deserves to be dismissed. He would therefore urge this Court to allow the Civil Revision Application and set aside the impugned order dated 04.01.2023.

5.5. He would refer to and rely upon following decisions of the Court in support of his case:-

(i) *Mr. Yadavalli Venkata Gopalam and Anr. Vs. M/s.*

² (2020) 10 SCC 783

- Sai Siddhant Developers*³;
(ii) *Imperia Structures Limited Vs. Anil Patani and Anr (Supra)*;
(iii) *Joydeep Roi and Anr. Vs. Srijan Residency LLP and Ors.*⁴;
(iv) *Kalyan Municipal Corporation Vs. Shri Prakash Mutha*⁵;
(v) *Nashik Municipal Corporation Vs. Sunil Baburao Kshirsagar and Ors.*⁶

6. Ms. Dhongade, learned Advocate for Respondent No.1 / Plaintiff would submit that the impugned order dated 04.01.2023 is legal, valid, passed with due consideration of facts and law and deserves to be upheld and confirmed. She would submit that Defendant No.1 filed Civil Revision Application seeking relief to dismiss Regular Civil Suit No.528 of 2023 in its entirety which cannot be allowed in law and on this ground itself Civil Revision Application deserves to be dismissed with costs.

6.1. She would submit that Plaintiff is a Cooperative Housing Society formed and registered under provisions of Maharashtra Cooperative Housing Society Act, 1960 and therefore is a separate legal person with its own legal existence. Therefore she would submit that there can be no bar on filing the Suit by the Society since it is not an allottee under the provisions of RERA. She would submit that any aggrieved allottee can prefer an application to RERA. She would

3 Appeal from Order No.662 of 2023 decided on 04th November 2023

4 2023 SCC OnLine Cal 3408

5 Civil Revision Application No.222 of 1999 decided on 22nd February 2008

6 Civil Revision Application No.153 of 2016 decided on 21st November 2025

submit that Section 2(d) of RERA defines the term “allotee” as any person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. She would refer to and rely upon decisions of this Court in the case of *Quantum Park Cooperative Housing Society Limited, Mumbai v. Ace Housing and Construction Ltd.*⁷, and *Shishir Bhajjal v. Ace Housing and Construction Ltd.*⁸ in support of her above submissions.

6.2. She would submit that Section 79 of RERA, 2016 cannot apply to the facts of present case since the Suit is filed by a Cooperative Housing Society and not by individual allottees. She would submit that it is not the intention of legislature to bar jurisdiction of Civil Court for deciding matters between the Cooperative Housing Society and the Promoter of any construction project. She would submit that there is no error apparent on the face of record in the impugned order passed by the Trial Court and it is correctly passed.

6.3. She would submit that Defendant No.1 failed to show how the suit is not maintainable under Section 149 of the MRTP Act. She would submit that Civil Court's jurisdiction is ousted only in respect of such matters, where State Government or its authorities alone are empowered under the MRTP Act to adjudicate or decide any matter.

⁷ Notice of Motion No. 95 of 2020 in Suit No. 419 of 2018 decided on 11th March 2020

⁸ Notice of Motion No. 2149 of 2019 in Suit No. 1037 of 2018, decided on 11th March 2020

She would submit that in the present case, dispute is regarding the question as to whether respondents have permitted Applicant to apply for change in plan or not. She would submit that in the present case Trial Court, is certainly possessed with jurisdiction to hear and decide the present Suit. In support of her aforementioned submissions, she would refer to and rely upon a decision of this Court in the case of ***Raja Bahotir Motilal Poona Mills Ltd. v. State of Maharashtra and others***⁹.

6.4. She would submit that CPC provides for Civil Courts are to try all civil suits unless barred by law. She would submit that scope of suit of civil nature under CPC is extensive and it covers various types of civil disputes. She would submit that the expression "expressly or impliedly barred" in Section 9 of CPC means that the prohibition on the court's jurisdiction may be explicitly stated in law or any legal provision or it may be inferred or implied from the nature of the suit, however since Plaintiff has sought relief of declaration along with other reliefs as mentioned in the Suit pending before the Trial Court, the Suit falls under the jurisdiction of Civil Court since authorities under RERA cannot adjudicate and grant declaratory reliefs.

6.5. She would submit that the Suit is not filed only against Defendant No.2 - Sanctioning Authority but also against the Promoter – Builder, neither it is filed only against the State Government or its authorities and hence provisions of Section 149 of MRTP Act are not

9 2002 SCC Online Bom 679

attracted in the present case. She would submit that the very crux of this case is that the seventh sanction plan approved in the month of September 2021 was never disclosed to the Plaintiff - Society after its formation on 18.03.2021. She would submit that Suit filed by Plaintiff - Society against Defendants is therefore maintainable and she would urge this Court to dismiss the Civil Revision Application and uphold and confirm the impugned order dated 04.01.2023, passed by Trial Court in Regular Civil Suit No. 528 of 2023.

7. I have heard both the learned advocates appearing for the respective parties and, with their able assistance, perused the record of the case. Submissions made by learned advocates at the bar have received due consideration of the court.

8. Present Civil Revision Application is filed against the impugned order passed by Trial Court rejecting application under Order VII Rule 11(d) of CPC. Perusal of prayers in Suit Plaintiff would show that Plaintiff Society seeks declaration that Clubhouse standing at the rear end of Tower No.26 is integral to "The Reserve", and therefore Plaintiff seeks permanent injunction restraining Defendant No. 1 and its agents from demolishing the existing clubhouse being used by the members of the Society and construction of additional structures in the same location and declaration that sanction plan dated 20.09.2021 is illegal and void to the extent of demolition of the

existing Clubhouse and construction of any other structure in its place.

9. It is trite that in order to decide application under Order VII, Rule 11 of CPC, what is required to be considered are averments in the Suit Plaint in conjunction with the annexures contained therein as a whole, without any addition, subtraction or consideration of any other document. The Court is to find out whether the cause of action contained in the Suit Plaint is barred by law under Order VII Rule 11(d). The ethos of Order VII Rule 11 of CPC requires the Court to consider whether the Suit Plaint discloses any right to sue for maintainability of the suit. Only if the Court finds the Suit to be manifestly vexatious it would be justified in exercising its power under Order VII Rule 11(d). What is crucial for the Court is to find out whether the Suit Plaint discloses cause of action which by law bars jurisdiction of Civil Court.

10. Perusal of Suit Plaint herein would *prima facie* show that numerous sanction plans namely seven sanction plans are approved by Defendant No.2, out of which notably in the third sanction plan dated 30.04.2013, 6 buildings along with 28 villas were shown to be part of “The Reserve”, in the fifth sanction plan dated 22.06.2018, Clubhouse is shown which was constructed within “The Reserve” and was in use by members of Plaintiff Society and in seventh sanction plan dated 20.09.2021 demolition of the aforementioned Clubhouse situated near

Tower No.26 in “The Reserve” and a new construction in its place is now planned by Defendant No.1 - Developer. It is seen that in or about 2017, Defendant No.1 handed over possession of Tower Nos.22 to 26 to members of Plaintiff – Society pursuant to receiving Occupation Certificate from Defendant No.2 and in March 2021, Plaintiff registered itself as Cooperative Housing Society under the provisions of Maharashtra Cooperative Societies Act, 1960. It is seen that in October 2022, workers of Defendant No.1 forbade members of Plaintiff – Society from entering, using and enjoying the Clubhouse constructed at the rear of Tower No.26 claiming that it was to be now demolished and a new Clubhouse was to be constructed on that location. It is in this factual matrix that Plaintiff filed Regular Civil Suit No.528 of 2023 seeking declaratory and injunctive reliefs. Therefore, question that arises for consideration is whether Plaint in Regular Civil Suit No.528 of 2023 is to be rejected under Order VII Rule 11 of CPC by virtue of the bar of Section 79 of RERA.

11. In order to decide the present dispute, it is trite to examine the position of law that arises for consideration. Section 79 of RERA provides for bar of jurisdiction of Civil Courts from entertaining and deciding disputes that may be decided by authorities under RERA. Section 79 is reproduced hereunder for ease of reference: -

***79. Bar of jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction*

shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

12. It is seen that Section 88 of RERA acts as a saving clause for adjudication of disputes by forums other than authorities constituted under RERA. Section 89 of RERA clothes the provisions of RERA with overriding effect over other laws for the time being in force. Section 88 and 89 of RERA are reproduced hereunder for ease of reference:-

88. Application of other laws not barred.—*The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*

89. Act to have overriding effect.—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

13. From the above it is pertinent to note that Section 88 balances Section 89 and Section 79 by crystallizing the position that RERA is not the sole remedy for any and all disputes between allottee and promoters / developers and that remedies contained in RERA exist without prejudice to other remedies as available in law. It is seen that the bar of Civil Court under Section 79 of RERA only operates in respect of matters to be determined by the authority constituted under RERA. Since prayers in the Suit Plaint are for relief of declaration, injunction and cancellation of seventh sanction plan on the basis of specific averments made in paragraph Nos. 14, 15, 24 and 27 which was validated without consent of Plaintiff - Society and rather contrary to the disclosures made by the Developer and the enjoyment by

members of Plaintiff Society of the clubhouse which was to be built as per previous sanction plan, it becomes necessary to examine whether Section 79 of RERA will bar the Civil Court i.e. Civil Judge Senior Division, Pune from adjudicating the aforementioned reliefs, thus empowering authority under RERA to decide and adjudicate such reliefs.

14. Attention is drawn to a decision of Supreme Court in the case of ***State of Tamil Nadu v/s. Ramalinga Samigal Madam***¹⁰ wherein it was held in paragraph Nos. 13 and 14 that when orders passed by tribunals are accorded finality, it is necessary to see whether such tribunal possesses powers to grant reliefs that would be granted by a Civil Court and if not then jurisdiction of Civil Court cannot be excluded by law. Paragraph Nos.13 and 14 are reproduced below for ease of reference:-

“13. Secondly, the principle indicated in the second proposition enunciated in Dhulabhai's case requires that the statute: when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability....

14. Thirdly, having regard to the principle stated by the Supreme Court while enunciating the first proposition in Dhulabhai's case, it is clear that even where the statute has given finality to the orders of the special tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction....”

10 (1985) 4 SCC 10

15. The words of the Supreme Court require reiteration in the present case since dispute between Plaintiff – Society and Defendant No.1 - Developer is one in which question of determination would involve seeking reliefs of declaration and permanent injunction with respect to the Clubhouse situated and in use in “The Reserve” which is being used by members of Plaintiff - Society to which they are now being restrained on account of the seventh sanction plan validated without approval of Society, thereby affecting their substantive right of use of the said property and therefore such a dispute cannot fall within the realm and ambit of the authority constituted under RERA. This is so because RERA Tribunal is not empowered by law to adjudicate such reliefs in view of the apparent and glaring absence of any provisions in RERA, 2016 to adjudicate reliefs in the nature of declaration, permanent injunction and cancellation of sanction plan approved by Defendant No.2 – Planning Authority.

16. In the present case, Defendant No.1 is the Promoter of Development project Lodha Belmondo and the exclusive area therein known as "The Reserve" which is nestled in greenery with an exclusive Clubhouse and golf course available for all residents of Lodha Belmondo project which was advertised between 2012 and 2021 and up till now, 7 sanction plans are passed, amended and validated. Members of Plaintiff - Society were put in possession in 2017. Society is formed, rather registered in March 2021. All along members are

using the Clubhouse which was approved in the 5th sanction plan on 22.06.2018 and thereafter constructed and is in use. In this backdrop, 7th sanction plan approved on 20.09.2021 shows that the said clubhouse in use was to be demolished and members of Plaintiff - Society were therefore barred from entering and using the Clubhouse. Admittedly, consent of Plaintiff - Society before revalidating / validating and / or proposing this 7th sanction plan approved on 20.09.2021 was never obtained.

17. The right of members of Plaintiff - Society to use the Clubhouse already stood crystallized and in place since inception and on construction of the Clubhouse. Further right of members of Plaintiff - Society to use internal roads which are now attempted to be constructed upon by virtue of 7th sanction plan without Society's consent is also the subject matter of this Suit. Buildings of Plaintiff - Society are an integral part of the area called "The Reserve". The meticulous details *qua* the sanctioned plans at every stage giving substantive rights to members of Plaintiff - Society are therefore correctly appreciated by the learned Trial Court while returning its findings in paragraph Nos.13 - 17 of the order dated 04.01.2023 passed below Exhibit 20.

18. The substantive right of members of Plaintiff - Society can only be protected by virtue of present suit proceeding by seeking injunction and declaratory reliefs as correctly opined by the learned

Trial Court in paragraph No.17 of the impugned order. Hence and in the facts and circumstances as alluded to and discussed hereinabove, I am in complete agreement with the findings returned in the order dated 04.12.2023. Contention of Defendant No.1 that remedy of Plaintiff - Society would lie before RERA tribunal cannot be sustained and it is only the Civil Court which can interfere in such circumstances and grant appropriate reliefs.

19. In light of the aforementioned observations and findings, order dated 04.01.2023 passed by learned Trial Court i.e. Civil Judge Senior Division, Pune does not suffer from any infirmity and is therefore upheld and confirmed. Present Civil Revision Application fails and deserves to be dismissed.

20. Needless to state that all contentions of parties to take appropriate steps to pursue other remedies as available to them in law are expressly kept open. It is clarified that the above *prima facie* findings are restricted to this order only. They shall not influence the adjudication of suit proceeding before the District Judge, Nashik. All contentions of parties are otherwise kept open.

21. Civil Revision Application is dismissed and disposed.

[MILIND N. JADHAV, J.]

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