IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14139 OF 2026

Pritam Sadan Sahakari
Gruharachana Sanstha Maryadit **... Petitioner**

Versus

Jyotsna S. Rajopadhya **... Respondent**

Mr. Prahlad Paranjape *a/w Ms. Shubhra Swami, Mr. Priyansh R. Jain, Ms. Shweta More for Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATE : 5 NOVEMBER 2026.

Oral Judgment:

1) Petitioner is a Co-operative Housing Society, who wants its member (Respondent) to vacate possession of Flat No.3 for the purpose of carrying out re-development of its building in pursuance of the Development Agreement dated 15 April 2026 executed by it with the developer. It has accordingly petitioned this Court challenging the order passed by the Co-operative Court dated 29 April 2026 refusing to grant mandatory temporary injunction against Respondent to hand over possession of Flat No. 3 for re-development purposes as well as the order passed by the Co-operative Appellate Court on 10 September 2026 dismissing the Appeal From Order No. 23 of 2026 and confirming the order of the Co-operative Court.

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2) Petitioner is a cooperative housing society registered on 20 March 1987 under the provisions of the Maharashtra Cooperative Societies Act, 1960. It has 18 members. Its building located at Ideal Colony, Kothrud, Pune was constructed 37 years ago. Petitioner-Society has undertaken the process of re-development of its building. The General Body of the Society resolved to undertake the re-development of it building vide General Body Meeting held on 29 July 2018. After considering the feasibility report of the architect, it called for offers from the eligible developers by resolution passed on 22 July 2021. In pursuance of public notice issued, various offers were received. After deliberating upon various offers in the general meeting held on 20 July 2022 in presence of the representative from the office of Deputy Registrar of Cooperative Societies, the society resolved to accept the offer of M/s Kotibhaskar Infrastructures and Developers Private Limited (**Developer**). By way of an overwhelming majority decision of 17 out of 18 members, initially a Memorandum of Understanding was executed with the developer. By way of majority decision, the draft of Development Agreement has been approved. The Deputy Registrar, Co-operative Societies Pune City-1 has granted its NOC under Section 79A of Maharashtra Co-operative Societies Act, 1960 to the redevelopment process vide letter dated 19 December 2024.

3) Respondent is a legal representative of Late Shubhada Waman Deodhar, who was the member of the society in respect of Flat No. 3 in society's building. It is contended by the Petitioner that she has been non-cooperative in the redevelopment process since the beginning. She is accused of not clearing maintenance dues of the

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society and that the accumulated maintenance dues are to the tune of Rs. 60,160/-. Since Respondent was not cooperating with the Petitioner society in the redevelopment process, Petitioner filed Dispute No. 42 of 2025 before the Cooperative Court at Pune on 18 February 2025. In its Dispute, the Petitioner society filed an application for temporary injunction seeking *inter alia* vacation of Flat No. 3 by the Respondent for redevelopment purposes. When the summons in the Dispute was sought to be served, the same came to be returned as unclaimed and by order dated 9 June 2025, the Dispute is directed to proceed *exparte*.

4) After filing of the Dispute in the Cooperative Court, the Society created interest in its property by executing Development Agreement dated 31 March 2026 with the Developer, which is registered on 15 April 2026. Prior to that, the developer had secured Commencement Certificate dated 13 August 2025 from the planning authority. The Developer called upon the society to vacate the flats by the members and to hand over their possession by letter dated 2 April 2026. Petitioner-society accordingly pressed the application for interim injunction at Exhibit 5 before the Cooperative Court. However by order dated 29 April 2026, the application at Exhibit 5 came to be rejected holding inter alia that there is no warrant for grant of a mandatory temporary injunction.

5) On the basis of the Developer's letter asking for possession of flats, the Society wrote to the members on 5 May 2026 to hand over possession of their respective flats by 31 May 2026 for carrying out redevelopment process. It appears that 17 out of the 18 members have

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already vacated their flats. Respondent is the only member who has refused to co-operate and is yet to hand over possession of her flat. The Petitioner-Society therefore filed Appeal from Order No. 23 of 2026 before the Cooperative Appellate Court. Though served, Respondent failed to appear in the Appeal, which proceeded *exparte* against her. The Petitioner produced before the Appellate Court the letters seeking vacation of the flats by members. However the Appeal is dismissed by the Cooperative Appellate Court by Order dated 10 September 2026. Aggrieved by the Orders passed by the Cooperative Court and by the Appellate Court, the Petitioner-society has filed the present Petition.

6) By order dated 22 October 2026, this Court had issued notice to the Respondent. Petitioner was also directed to serve Respondent by private service and to file an affidavit of service. Accordingly, Petitioner has filed affidavit of service dated 3 November 2026, which indicates that notice of the Petition was dispatched by speed post AD to the Respondent. The packet containing the notice is however returned undelivered with a remark "door locked". Mr. Paranjpe has submitted that the Respondent does not actually reside in the flat and that the same is kept locked. So far as the Court notice is concerned, apparently the bailiff could not locate the building and returned the notice unserved. Since the private notice was returned unserved with the remark ‘door locked’, as per this Court’s directions, the Court bailiff has visited the building today and has confirmed that the flat is actually kept locked. The bailiff has sent a photograph of locked door of Flat No. 3 bearing the nameplate of Respondent. It is also seen that the Respondent has not appeared before the Cooperative Court and the

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Cooperative Appellate Court. Considering the nature of urgency involved in the Petition, hearing of the Petition cannot be postponed any further.

7) I have heard Mr. Paranjape, the learned counsel appearing for Petitioner. He submits that 17 out of 18 members have vacated the possession of their flats and the developer has paid them the transit rent in respect of the months June, July and August 2026 upon vacation of the flats. That the developer has the obligation to complete construction of new building by 1st December 2029, with grace period of only 6 months. That though the Appellate Court has disagreed with the findings of the Trial Court about impermissibility to grant mandatory interim injunction, it has still proceeded to dismiss the Appeal on the ground that when the order was passed by the Trial Court, the time to vacate the flat had not arrived. That the Appellate Court was shown Developers' letter dated 2 April 2026 and society's email dated 5 May 2026 for vacation of flats by 31 May 2026. That instead of granting injunction itself, the Appellate Court has expected Petitioner society to approach the Trial Court once again. He prays for setting aside orders passed by the two Courts.

8) I have considered the submissions canvassed. I have also gone through the reasons recorded by the Cooperative Court and by the Appellate Court. I have perused the records of the case.

9) Petitioner society is aggrieved by non-grant of injunction against the Respondent by directing her to vacate the possession of Flat

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No. 3 despite making both the Courts aware of the fact that the entire process of redevelopment is being withheld on account of non-cooperation by her.

10) Perusal of the Order passed by the Cooperative Court would indicate that it has rejected the Application at Exhibit-5 observing *inter alia* that granting possession at that stage would in effect amount to granting final relief at an interim stage, which is impermissible. It is further held by the Cooperative Court that the case does not fall within the exceptional category for grant of mandatory temporary injunction in view of principles enunciated by the Apex Court in its judgment in ***Dorab Cawasji Warden Vs. Coomi Sorab Warden***[1].

11) In my view, the Co-operative Court has completely misunderstood the ratio of the judgment in ***Dorab Cawasji Warden*** (supra). The judgment undoubtedly sets out three non-exhaustive cardinal principles of strong case for trial involving a higher standard than *prima facie* case normally required for prohibitory injunction, prevention of irreparable/serious injury incapable of being compensated in terms of money and balance of convenience. However, while considering whether the party seeking interim mandatory injunction has made out a strong prima facie case, the Court needs to consider whether the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it. Quoting a passage from ***Halsbury's Laws of England***[2], it is held by the Apex Court that if the case is clear and the one which

[1] (1990)2 SCC 117
[2] 4th edn., Vol. 24, para 948

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the Court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application. In a case involving non-vacation of premises by dissenting members, by their acts of causing hindrance to the redevelopment process, such dissenting members actually seek to steal a march on the Plaintiff, and the Courts are duty bound to remedy the situation by granting interim mandatory injunction. The Courts must appreciate as to who ultimately are the sufferers. They are disciplined members who act in the spirit of majority decision and give away their homes for redevelopment of the building. They cannot be made to suffer on account of whims and fancies of the dissenting members.

12) In a litigation involving non-vacation of premises by dissenting members of a housing society or association of apartments, when interim relief of handing over possession is sought by the society or by the developer, the Civil and Cooperative Courts cannot apply the usual principle of grant of temporary injunction being akin to granting final relief. Even if it may be akin to grant of final relief, it must necessarily be granted. By withholding such relief till final decision of the Suit/Dispute, the subject matter of litigation is put at the risk of being frustrated. Afterall temporary injunctions, prohibitory or mandatory, are to be granted principally for preserving the subject matter of litigation. Therefore, mandatory temporary injunction can be granted once the Court is satisfied that permitting a dissenting member to occupy the flat would put the entire project in a serious predicament.

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The Courts must be mindful of the fact that when dissenting flat occupiers refuse to vacate their flats and create hurdles in the redevelopment process, the societies, association of apartments or developers have no option left but to approach the Courts, be it a Civil Court or a Cooperative Court or Court exercising powers under Section 9 of the Arbitration and Conciliation Act 1996, for seeking vacation of the flats. If the Courts apply rigid principles of interim relief being akin to final relief, they put the subject matter of the litigation to the risk of being frustrated. If the developer exits the scene after noticing that he is not securing possession of the entire building for demolition and reconstruction after the consenting majority members are out of their homes, the real sufferers are the disciplined members who act in accordance with the cooperative principles. Such a situation enables the dissenting members to steal a march over the consenting members. Can Courts countenance this? The answer, to my mind, is in the emphatic negative. Therefore the Courts must come to the assistance of Plaintiff and grant temporary mandatory injunction directing the dissenting members to vacate the flats in their possession.

13) The principles of Court's powers to direct dissenting members to vacate possession of their flats at an interim stage are discussed by the Division Bench of this Court in ***Pranav Constructions Vs. Priyadarshani CHSL***[3]. While dealing with Court's powers under Section 9 of the Arbitration and Conciliation Act, 1996, this Court held that the individual members of a co-operative society are bound by the covenants in the Development Agreement executed by the Society with

[3] (2026) 1 AIR BOM R 452

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the Developer and that their individual rights are subservient to the obligations of the society under the Development Agreement. It is further held that existence of disputes between the members and the society about their entitlements flowing out of redevelopment process cannot be a ground for the Court not to make interim measures directing vacation of premises in exercise of powers under Section 9 of the Act.

14) Even in relation to a Civil Suit filed before this Court, this Court while granting temporary injunction directing vacation of flats by the dissenting members has observed in ***Lakhani Realty LLP Vs. Kalina Darshan CHSL***[4] as under:

> **8**. Plaintiff wants immediate vacation of flats by Defendant Nos.2 to 37 for the purpose of undertaking the activity of demolition of the building. According to the Plaintiff, out of 158 members, 134 members have already vacated their flats and that Plaintiff has already started paying rent to the members who have vacated their flats. Plaintiff claims that by now, an amount of Rs. 27.87 crores is spent towards rent, corpus, bank guarantee and legal expenses. According to the Plaintiff, further amount of 7.41 crores is incurred towards obtaining permissions. Plaintiff claims to have spent an amount of Rs.52 lakhs towards interest. This is how Plaintiff claims to have spent amount of Rs.35.79 crores by now on the Project.
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> 11. On the other hand, the learned counsel appearing for the contesting Defendants have expressed various reservations for not co-operating with the redevelopment process and for refusing to handover possession of their respective flats. By now, the law relating to non-co-operation by minority members in redevelopment of society's building is well settled. In Pranav Constructions Limited Versus. Priyadarshini Co-operative Housing Society Limited & Ors.1, this Court has held that individual members of a cooperative society are bound by the covenants of Development Agreement executed by the society with the developer and their individual rights are subservient to the obligations of the cooperative society under the Development Agreement. It has further been held that existence of

[4] Interim Application No. 7582 of 2025 in Commercial Suit No. 127 of 2025 decided on 27 August 2026

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> disputes between the members and the society about their entitlements flowing out of the redevelopment process cannot be a ground for a Court not to make appropriate interim measures directing vacation of premises for the purpose of ensuring smooth redevelopment of the Project.
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> **12**) In the present case, it is evident that the non-cooperation of members in respect of only 24 flats has stalled the entire redevelopment process. The other 134 members have vacated the possession of their respective flats. Although period of more than a year has passed, the Plaintiff-Developer is unable to take further steps in the redevelopment project by demolishing the building. The members in respect of 24 flats are thus holding the entire redevelopment project to ransom. However, at the same time, with a view to verify if there are any genuine reasons for those Defendants to oppose the redevelopment process, I have considered their objections.
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> **30**) In view of the above discussion, *prima-facie* case is made out by the Plaintiff for grant of temporary injunction as prayed for in the Interim Application. It is important to preserve the subject matter (redevelopment project) of the suit during pendency thereof. Irreparable injury would be caused not only to the Plaintiff but mainly to the other cooperating members of the first Defendant-Society, if urgent interim measures are not made. The contesting Defendants cannot be permitted to occupy their respective flats during pendency of the suit which would bring the entire redevelopment project to a standstill. Plaintiff has already incurred expenditure of Rs.35.79 crores and non-grant of temporary injunction would only escalate the costs for the Plaintiff making the Project unviable at some point of time. The balance convenience is heavily tilted in favour of the Plaintiff and Defendant No.1 and against Defendant No.2 to 37. No loss or prejudice would be caused to Defendant Nos.2 to 37 if they are directed to vacate the flats in their possession. Upon vacation of flats, they would be paid transit rent on par with other members. They are also free to execute PAAA with the Plaintiff and Defendant-Society. In my view therefore a perfect case is made out for grant of temporary injunction in favour of the Plaintiff.

15) Here, if interim mandatory injunction is not granted, the entire re-development process would get frustrated. For non-cooperation by only one member, the other 17 members would suffer. Upon vacation of flats by the members, obligation to pay transit rent

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triggers. Therefore, if one member refuses to vacate possession of the flat, not only the re-development process gets delayed indefinitely, by the developer also incurs liability to pay transit rent without even getting possession of the building for demolition and reconstruction of the building. In the present case, the developer has already started paying transit rent to the other members of the society. If the developer does not secure the entire building for demolition the entire redevelopment process would be stuck.

16) In my view, therefore in every case where a co-operative housing society, association of apartment or a developer seeks an interim order for securing possession from a dissenting flat occupier for re-development purposes, existence of strong prima facie case within the principles laid down by the Apex Court in ***Dorab Cawasji Warden*** (supra) has to be necessarily presumed. Holding a redevelopment process due to dissent of minority members is a factor enough for the Courts to presume existence of a strong prima-facie case. It is not necessary for the Plaintiff to establish anything more for the purpose of seeking interim mandatory injunction, once it is shown that majority decision has been taken to undertake the process of redevelopment through the chosen developer and time to vacate possession of the flat has arisen.

17) In my view therefore, this was a perfect case where the Co-operative Court ought to have granted interim mandatory injunction in favour of Petitioner by directing Respondent to vacate the flat in

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possession as well as a further direction for taking over possession of the flat in the event she refuses to co-operate.

18) When the Society appealed before the Co-operative Appellate Court, it appreciated the position that mandatory temporary injunction can be granted in a case like the present one, which is clear from following findings recorded by it:

> It is not out of place to mention here that, a member of the society is bound to vacate the premises when majority of members (as in the present case all members except the respondent) have acted upon the resolutions of the society to process redevelopment and vacated the premises handing over to the developer through the society. The respondent who is in minority is bound to honour request of the society to vacate the premises and try to settle her issues with the society thereafter. The Court has very much power to pass such mandatory injunction even at interim stage.

19) However, despite holding that the Court possesses necessary powers for making mandatory injunction even at an interim stage, the Appellate Court refused to grant the one by making following observations:

> However in the present case as discussed above no case is made out by the society to get vacated the premises through Court. Therefore the A.O. needs to be rejected for time being. The society has every right to move application before the trial Court in the changed circumstances. Therefore, at this stage I do not see any merit in the A.O. and to interfere in the order passed by the trial Court. Hence the order of the trial Court rejecting the interim application is correct. Thus, the argument advanced by Appellant is dealt with accordingly, and the point No.1 to 3 are answered as per final order.

20) In my view, the Co-operative Appellate Court has clearly faltered in not allowing the Appeal preferred by the Petitioner-Society.

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Petitioner produced before the Appellate Court Developer's letter dated 2 April 2026 and Society's email dated 5 May 2026 calling upon members to vacate the premises by 31 May 2026. Therefore, once the Appellate Court arrived at a conclusion that the case warranted grant of mandatory injunction even at interim stage, it could not have withheld the same only because at the time of passing of the order by the Co-operative Court, the time to vacate the premises was yet to arrive. The Appellate Court has completely ignored the position that by email dated 5 May 2026, the last date for vacation of the flat was 31 May 2026 and not 31 August 2026 as erroneously recorded by it in paragraph 15 of its order. Instead of the Appellate Court directing vacation of the flat by Respondent, it has expected the Petitioner society to file a fresh application before the Trial Court once again seeking mandatory temporary injunction. Despite being satisfied that the case warrants grant of injunction, the Cooperative Appellate Court has expected that the Petitioner must once again approach the Trial Court to seek injunction. This footballing approach by the Appellate Court ought to have been avoided. Far from coming to the aid of the Petitioner society despite being satisfied that the case warrants grant of injunction, the approach ensures that the Society gets entangled in a maze of litigation. The manner in which the Trial Court and the Appellate Court have exercised jurisdiction in the present case is disquieting. This Court expresses its disapproval.

21) The ground reality is that 17 out of 18 members have vacated possession of their flats. The photographs on record indicates that the building is all set for demolition. Respondent is apparently not residing

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in the flat. The WhatsApp chat on record indicates that she is well aware of the progress of redevelopment process and the litigation. She has failed to appear before any of the Courts. The redevelopment process has now commenced. There is Commencement Certificate issued by the planning authority. 17 members have vacated the flats and the building is now completely vacant and set for demolition. It appears that the rent in respect of the months of June, July and August 2026 is already paid to all the members by the developer on account of 31 May 2026 being the last date for handing over possession of the flat. Even Respondent would be entitled to be paid the transit rent from the date she vacates possession of the flat. She would receive a new flat in the reconstructed building. Therefore, no serious prejudice would be caused to the Respondent if the possession of the flat is handed over to the society for reconstruction of the building. Irreperable injury to the Petitioner-society is writ large. Balance of convenience is heavily tilted in Petitioner's favour.

22) In view of the above position, in my view, both the Co-operative Court as well as the Appellate Court have grossly erred in not exercising jurisdiction vested in them by directing the Respondent to vacate and hand over possession of her flat for carrying out the redevelopment process. Both the Courts ought to have appreciated the position that because of the incalcitrant attitude of Respondent, the entire redevelopment process would get frustrated thereby putting the balance 17 members of the society to a great prejudice.

23) In view of the above discussion, the Petition succeeds and I proceed to pass the following Order:

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(i) Orders dated 29 April 2026 passed by the Co-operative Court as well as the order dated 10 September 2026 passed by the Co-operative Appellate Court are set aside.

(ii) The Application at Exhibit 5 filed in Dispute No. 42 of 2025 is allowed.

(iii) Respondent is directed to hand over possession of Flat No. 3 to the Petitioner Society on or before 20 November 2026.

(iv) In the event Respondent fails to hand over possession of Flat No. 3 by 20 November 2026, Petitioner-Society shall be entitled to take over possession thereof by taking Police aid. The local Police Station is directed to provide necessary police assistance to the Petitioner-Society to take over possession of Flat No. 3.

(v) While taking possession of Flat No. 3, in the event Respondent is not present, the Society shall prepare an inventory of movables found in the Flat and to give its intimation to the Respondent. In the event Respondent fails to take custody of the movables, the society shall be entitled to deal with the same in accordance with law.

24) With the above directions, the Writ Petition is **allowed and disposed of.** There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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