veta Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 5460 OF 2026

IN

COMMERCIAL SUIT NO. 105 OF 2026

Minoo Tejraj Gowani ***...Applicant/ Plaintiff***

: Versus :

Saidale Co-operative Housing Society Limited & Anr. ***...Respondents***

Mr. Pradeep Sancheti, Senior Advocate *with Mr. Vyom Shah, Ms. Pallavi Bali, Mr. Anagh Pradhan, Mr. Samkit Jain, Ms. Athira Nair and Ms. Srushti Shah i/b. Divya Shah Associates, for the Plaintiff.*

Mr. Ravi Kadam, Senior Advocate *with Mr. Karl Tamboly, Mr. Nirav Shah, Ms. Niharika Singh and Ms. Richika Kadam i/b. Little & Co., for Defendant No.1.*

Mr. Zal Andhyarujina, *Senior Avocate with Ms. Revati Desai, Ms. Shachi Udeshi, Mr. Aashdin Chivalwalla and Ms. Juhi Shah i/b. Wadia Ghandy & Co., for Defendant No.2.*

CORAM: SANDEEP V. MARNE, J.

ORDER RESD. ON 28 OCTOBER 2026.

ORDER PRON. ON : 5 NOVEMBER 2026.

ORDER :

1) This is an application filed by the Plaintiff seeking temporary injunction. The Plaintiff is aggrieved by non-consideration of her claim of membership by Defendant No.1-Society and by non-grant of

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any benefits in the redevelopment process undertaken by Defendant No.1-Society through Defendant No.2-developer. The Plaintiff claims membership of Defendant No.1-Society on the strength of alleged allotment made to her by the society in respect of one shop and entire lower-level podium with 22 garages in the demolished structure of Defendant No.1-Society. She desires grant of permanent alternate premises in the proposed building by treating her on par with other members of the Society. Since the Defendants have failed to take cognizance of Plaintiff's claim *qua* one shop and entire lower-level podium with 22 garages, she has filed the present Suit seeking various injunctive and declaratory reliefs as well as for recovery of various amounts from the Defendants. In the Suit, the Plaintiff has filed the present Application to restrain the Defendants from taking steps in furtherance of or acting upon Development Agreement and Supplementary Deed, both dated 6 October 2025 without making provision of premises for her. The Plaintiff has also sought to restrain the Defendants from submitting any plans to the Municipal Corporation for sanction without first incorporating and providing for her entitlements in respect of one shop and the entire lower-level podium comprising 22 garages.

2) A very brief reference to the factual background would be apt. It is Plaintiff's pleaded case in the Plaint is that she is a member of Defendant No.1-Society and held allotment in respect of one shop and entire lower-level podium with 22 garages in respect of structure constructed on land of Defendant No.1-Society at CTS No.701, Malabar and Cumbala Hill Division. The Plaintiff claims to have purchased one

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shop on the lower-level podium and entire lower-level podium with 22 garages vide registered Deeds of Confirmation dated 4 February 1999. The Plaintiff claims that application for membership was filed by her father-Tejraj Gowani in his capacity as father and natural guardian of Plaintiff, who was minor at that time. The Plaintiff claims that she was admitted as member of Defendant No.1-Society on the strength of purchase of one shop and 22 garages.

3) In the year 1993 M/s. Barclay Exports Pvt. Ltd. filed Dispute No.352 of 1993 in Co-operative Court at Mumbai against Pratibha Cooperative Housing Society Limited, which was the earlier name of Defendant No.1-Society. The earlier building of Defendant No.1-Society carried threats of demolition on account of notices issued by Municipal Corporation. The Disputants of Dispute No. 352 of 1993 apprehended that they would lose rights qua the flats on account of direction for demolition of the building. On 30 August 1993, the Co-operative Court passed interim injunction, against which Appeal No.42 of 1994 was filed by the Society. In that appeal, the Plaintiff's father filed application for impleadment in Plaintiff's capacity as member of the Society. According to the Plaintiff, the said application was not opposed by Defendant No.1-Society. By judgment and order dated 26 May 1994, the Co-operative Appellate Court dismissed the Appeal. According to Plaintiff, the Appellate Court recorded various findings establishing Plaintiff's entitlement of membership with the Society *qua* one shop and 22 garages. Defendant No.1-Society filed Writ Petition No.3102 of 1994 in this Court challenging Appellate Court's order dated 26 May 1994. The Appeal was disposed of by order dated 30 August 1999 without

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disturbing findings recorded by the Co-operative Court in the order dated 26 May 1994. The Dispute No.352 of 1993 was decided by the Co-operative Court by judgment dated 29 September 2001 and the same was allowed. Cross Appeals were filed before the Co-operative Appellate Court challenging the decision of the Co-operative Court dated 29 September 2001. The Co-operative Appellate Court dismissed the appeal filed by Defendant No.1-Society while partly allowing the applications in the appeal filed by the original disputants. The order of the Co-operative Appellate Court was challenged before this Court and by judgment and order dated 19/20 March 2003 this Court directed Defendant No.1-Society to provide suitable flats to all its members in proportion to their contributions and providing options to the society, which included option for demolition of the half-constructed building. In the year 2004 a public notice was issued by Defendant No.1-Society seeking representation on behalf of the members. The Plaintiff responded to public notice on 22 September 2004 seeking various documents. After prolonged litigation, the entire structure of Defendant No.1-Society was finally demolished in the year 2019.

4) On 20 July 2022 Defendant No.1 Society issued notice setting out a proposal for redevelopment. The Plaintiff submitted response dated 26 July 2022. The Defendant No.1 did not respond back to the Plaintiff.

5) One of the members of Defendant No.1-Society, Mrs. Devyani Gulabsi filed Suit No.349 of 2025 in this Court alleging irregularities in the process of redevelopment adopted by the Society. By

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Judgment and order dated 6 October 2025 this Court rejected temporary injunction. Mrs. Gulabsi filed Appeal (L) No.32010 of 2025 before the Division Bench of this Court, which is pending without grant of any interim order in her favour. The Plaintiff claims to have acquired knowledge about the legal proceedings relating to redevelopment of the building of Defendant No.1-Society. The Plaintiff also acquired knowledge about various meeting held and decisions taken relating to selection and appointment of the developer. The Plaintiff filed Interim Application No.7446 of 2025 in Suit No.349 of 2025 seeking her impleadment in the Suit. The Plaintiff also made correspondence with the Society. The Plaintiff claims discovery of factum of execution of Development Agreement dated 6 October 2025 between Defendant Nos.1 and 2 during the course of hearing of appeal before the Appellate Court.

6) In the above background, the Plaintiff has filed the present Suit seeking various declaratory and injunctive reliefs for protecting her claim in respect of membership *qua* one shop and 22 garages. As observed above, she has filed the present Interim Application seeking temporary injunction in the Suit.

7) Defendant Nos. 1 and 2 have appeared in the Suit. They filed interim applications seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) alleging non-compliance with the provisions of Section 12A of Commercial Courts Act, 2015. By order dated 13 October 2026 this Court has rejected the applications preferred by the Defendants.

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8) The Defendants have filed their respective Affidavits-in-reply opposing the application for temporary injunction. The Plaintiff has filed her rejoinder. Since pleadings in the Application are complete, the same is taken up for hearing and final disposal with the consent of the learned counsel appearing for the parties.

9) Mr. Sancheti, the learned Senior Advocate appearing for the Plaintiff submits that the Plaintiff has purchased one shop and 22 garages through the registered Deeds of Confirmation dated 28 March 1990 which are signed by the Chairman and Secretary of the Society. That share certificates are issued in the name of the Plaintiff by Chairman, Secretary and Managing Committee of the Society. That therefore the Plaintiff's position as member of the Society and her entitlement *qua* shop and lower level podium with 22 garages is crystalised. In support, he relies on judgment and order dated 26 May 1994 passed by the Co-operative Appellate Court. That Defendant No.1-Society never questioned Plaintiff's claim of membership *qua* one shop and 22 garages. That, pursuant to the public notice dated 11 September 2004 inviting representations, the Plaintiff had duly submitted her response along with all the relevant supporting documents. However, the Society failed to respond to the same, thereby giving rise to a dispute concerning the Plaintiff's claim. That when second public notice dated 20 July 2022 was sent, the Plaintiff once again responded for buttressing her claim of membership *qua* one shop and 22 garages. That the earlier dispute before Co-operative Court and Co-operative Appellate Court related to non-constructed units in the building in which members claimed rights. However, in respect of shop and 22 garages there was no

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dispute as the same were constructed in accordance with the approved plan.

10) Mr. Sancheti further submits that area of shop is 774 sq.mtrs. and since Development Agreement dated 6 October 2025 envisages allotment of 22% additional area the Plaintiff is entitled to commercial/shop premises of 944.28 sq.ft. in new building. That Defendant No. 1–Society is obligated to provide alternative premises in lieu of the 22 garages, together with a proportionate increase in the area. It is pertinent to note that all 22 garages claimed by the Plaintiff are duly reflected in the sanctioned plans. That mere sanction to 22 garages as car parking spaces would not affect Plaintiff's entitlement as what is sold by the Society to the Plaintiff is 22 garages. He submits that parity is required to be extended to the Plaintiff on similar lines as that of 8 flat purchasers whose flats could not be constructed though membership was granted to them *qua* those flats. In support, he relies on judgment of this Court in ***ALJ Residency Co-operative Housing Society Limited Vs. Gehlot Development Services Pvt. Ltd.***[1] That in the Development Agreement dated 6 October 2025 also, entitlement of the Plaintiff to 22 garages is clearly reflected. That the Development Agreement also postulates car parking spaces at podium level which belonged to members to the extent of their entitlements and that therefore Plaintiff's entitlement to 22 garages cannot be disputed. That the provision so made in the Development Agreement indicates admission on the part of the Defendants about entitlements of the Plaintiff.

1 Writ Petition No.10241 of 2026 decided on 7 October 2026.

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11) Mr. Sancheti further submitted that the Plaintiff is already a member of the Society and the case does not involve claim of membership at this stage by reference to garages/car parking spaces on a stand-alone basis. That in judgment in ***Ambit Urbanspace V/s. Poddar Apartment CHSL***[2] the Division Bench of this Court has also recognised member's rights to monetise car parking spaces in the context of redevelopment.

12) Mr. Sancheti relies on Development Control and Promotion Regulations 2034 **(DCPR 2034)**, Regulation 44 Clause 6(ii) in support of his contention that it is permissible to increase car parking spaces by charging a premium which is a common practice resorted to by most of the developers. That in the present case, Defendant No.2 has sought additional car parking spaces by paying premium. That as per bye-laws relied upon by Defendant No.1, the Managing Committee is conferred with powers to entertain applications, approve any contracts on behalf of Defendant No.1 which includes agreements for admission of members. He submits that Defendant No.1-Society has not produced I and J Registers for the relevant period but has vaguely raised doubts about Plaintiff's membership. That, both prior to and subsequent to the order passed by the Co-operative Appellate Tribunal, the Society never disputed the Plaintiff's entitlement or membership, nor did it initiate any proceedings to challenge the validity or genuineness of the relevant documents relied upon by the Plaintiff. That the relevant documents pertaining to the Plaintiff were signed by the Chairman of the Society at the instance of the same person, namely, Rajendra Meghlani, who

2 Commercial Arbitration Appeal (L) No.12585 of 2025 decided on 1 July 2025

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continues to hold the position of Chairman of the Society even as on date.

13) Mr. Sancheti relies on various circulars issued by the Maharashtra Real Estate Regulatory Authority (**MahaRERA**) in support of his contention that it is permissible to allot and sell covered car parking space/garage for monetary consideration.

14) On the above broad submissions, Mr. Sancheti prays for grant of temporary injunction by either restraining the Defendants from submitting the plans to Municipal Corporation without taking into consideration Plaintiff's claim or at least a direction against Defendants to include Plaintiff's claim in respect of one shop and 22 garages + 22% additional area in the plans for construction of the new building.

15) Mr. Kadam, the learned Senior Advocate appearing for Defendant No.1 opposes the Interim Application submitting that Defendant No.1-Society has only 35 members and the Plaintiff has never been recognised as a member of the Society. That her name does not appear in statutory Registers i.e. Forms I and J. That the purported resolutions as referred in the agreement and application for membership sought to be relied upon by the Plaintiff cannot be considered as valid resolution as the same was passed purportedly in the year 1995 during the effaced period when Defendant No.1 did not have duly constituted Managing Committee. That the period commencing from the last duly recorded Managing Committee meeting dated 19 December 1988 until the appointment of the Administrator in June 1993 appears to have been

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completely effaced from the records. That this is evident from order dated 25 June 1993 appointing administrator on Defendant No.1 expressly recording that no Managing Committee meetings were held since 19 December 1988 and that no general body meeting was held since 1988. That administrator passed resolution dated 21 August 1993 annulling and setting aside any meetings held from 23 December 1988 which includes the period during which the Plaintiff claims to have been granted membership. That the Plaintiff never challenged Resolution dated 21 August 1993, which has the effect of expungement of any decision taken on behalf of the Society.

16) Mr. Kadam further submits that in the year 1990 the Plaintiff was a minor aged 14 years and did not have capacity to apply for or being granted membership of a co-operative society as per the provisions of Section 22 of the Maharashtra Co-operative Societies Act, 1960 (**the MCS Act**). That as per clauses 10 and 11 of both the Affidavits and Applications of Membership relied upon by the Plaintiff, she did not comply with her obligation to make payments towards sale consideration. That no proof of payment is produced by the Plaintiff. That 35 members came together to contribute amounts for purchase and construction on the land of Defendant No.1. That the Plaintiff cannot claim parity with 35 members, who have made statutory payments including maintenance charges to Defendant No.1. That the Deeds of Confirmation dated 4 February 1999 are executed unilaterally by the Plaintiff without society being party to it. The Plaintiff's reliance on order dated 26 May 1994 passed by the Co-operative Appellate Court is inapposite in which mere *prima facie* findings are recorded for

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impleadment of Plaintiff's father directly in the appeal. That contemporaneously the Chairman had placed his objections to the observations made by the Co-operative Appellate Court and had informed the Divisional Joint Registrar about absence of any valid documents in relation to Plaintiff's father. That the findings recorded in interlocutory proceedings are *prima-facie* and are confined only to those proceedings as held by the Apex Court in ***Ayan Chatterjee Vs. Future Technology Foundation Inc. & Ors.***[3] That after the impleadment, the Plaintiff and his father went missing from the action uptill 2025. Mr. Kadam further submits that under bye-law 80A, shops, godowns and garages vests exclusively in Defendant No.1-Society and the same cannot be sold. He submits that the total car parkings proposed in the old plans were only 80 and prior to date of Plaintiff's alleged agreement 73 out of 80 car parkings have already been allotted amongst 35 members. That therefore there were no adequate car parkings available for being sold to the Plaintiff. That Plaintiff's claim in respect of 22 garages is inconsistent as plans relied upon by her refers to car parking spaces and not to garages.

17) Mr. Kadam further submits that membership must lie within sanctioned plan and neither registrar nor general body can validate any premises contrary to the sanctioned plan. That no garages were sanctioned in the approved plans. In support, he relies on judgments of this Court in ***Uday Dalal & Ors. V/s. Divisional Joint Registrar, Co-operative Societies*** [4], ***Punam Prashant Dhige & Ors. Vs. Divisional Joint***

3 (2017) 13 SCC 542
4 2025 SCC OnLine Bom 5202,

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Registrar of Co-operative Soceities & Ors. [5] and ***Ashwini Heights Cooperative Housing Society Ltd. Vs. Jyoti Nitin Lunia and Ors.*** [6]. That stand-alone garage is not a flat within the meaning of Section 2(a-1) of Maharashtra Ownership Flats Act, 1963 **(MOFA)** and cannot be independently sold. In support, he relies on judgment in ***Nehalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd.*** [7]. That a similar view is also taken by this Court in ***Amanul Ekramul Ansari Vs. State of Maharashtra and Ors.***[8]

18) Mr. Kadam submits that even *qua* the claim for shop and lower-level podium is concerned, the application of membership shows handwritten insertions. That when Co-operative Appellate Court's order traveled to this Court, there were only 35 members in the Society and the Plaintiff was not a party before the proceedings before this Court. That the judgment of this Court directed existing structure to be demolished and new building to be constructed to accommodate only 35 members. That there is no mention of any garage or shop in the entire judgment. That this Hon'ble Court relied upon the Register of Members to hold that only the disputants whose names were reflected therein were members of the Society, and the Plaintiff was not included therein. Further, Defendant No. 1–Society has resolved that the proposed project is purely residential and has accordingly executed a Development Agreement. On this basis, it is contended that there is no question of allocating or reserving any shop in favour of the Plaintiff at the interim stage. He

5 Writ Petition No.12738 of 2025 decided on 24 December 2025
6 Writ Petition No.2241 of 2026 decided on 20 August 2026
7 (2010) 9 SCC 536
8 Writ Petition No.1293 of 2026 decided on 2 February 2026

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submits that at the highest residential flat equivalent to 896 sq.ft. alongwith two car parking spaces can be reserved subject to outcome of the Suit as agreed by Defendant No.2.

19) Mr. Kadam further submits that if the Plaintiff claims parity with other society members and participation in development process, she must obtain membership under Section 22 of the MCS Act. By bypassing issue of membership, she cannot directly claim rights available to the society members. That this Court does not have jurisdiction under Section 91 of the MCS Act to adjudicate the present *lis*. In support, he relies on judgment of this Court in ***Ranisati Sarvajanik Aushdhalaya & Ors. Vs. Malad Co-operative Housing Society Ltd. & Ors.***[9]. In so far as claim in respect of lower-level podium is concerned, Plaint offers no explanation for Plaintiff's entitlement of 8296.37 sq.ft. in the building in respect of the alleged entitlement of one shop and 22 garages. That there are handwritten insertions in the application for membership for 22 garages though there is no sanction of podium in the FSI area. That podium is a common amenity and cannot be sold to the Plaintiff.

20) Mr. Kadam further submits that no interim relief can be granted in favour of the Plaintiff on account of failure to make out any prima-facie case. That the Plaintiff has failed to produce any resolution admitting her as member and membership cannot be claimed merely on the basis of an application as held in ***Alhad R. Vaidya & Ors. Vs. State***

9 2025 SCC OnLine Bom 4155

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of Maharashtra & Ors.[10]**.** That the Plaintiff's claim is barred by limitation. Further, the Plaintiff has failed to make out a prima facie case demonstrating the existence of a serious question to be tried, with a reasonable prospect of obtaining the reliefs sought, which is one of the tests laid down by the Full Bench judgment of this Hon'ble Court in ***UTO Nederland B.V. & Anr. vs. Tilaknagar Industries Ltd***.[11] and in the judgment of the Apex Court in ***Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.***[12]. That the balance of convenience is heavily tilted against the Plaintiff, who would not suffer any irreparable loss as the Plaintiff has quantified damages at Rs.15 cores. He relies on judgment of the Apex Court in ***Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi & Ors.***[13] in support of his contention that harm compensable in money does not warrant injunction. Mr. Kadam accordingly prays for rejection of the Interim Application.

21) Mr. Andhyarujina, the learned Senior Advocate appearing for the Defendant No.2-developer also opposes the Interim Application. He submits that whole claim of the Plaintiff is based on a discarded plan. That the claim stands frustrated as there are no commercial shops in the new plans drawn up by Defendant No.2 as per mandate given by Defendant No.1. That the garages cannot be equated with flats. That the claim is barred by limitation since public notice was issued in 2022 and the Plaintiff was fully aware of non-recognition of her claim for any premises in the building of Defendant No.1-Society. Mr. Andhyarujina

10 Wp No. 2569 of 2002 decided on 7/7/2016
11 2025 SCC OnLine Bom 6140
12 **(2023) 1 SCC 634,**
13 2024 11 SCC 351

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submits that there are no commercial shops in the new building. However, in the event this Hon'ble Court arrives at the conclusion that the Plaintiff's interests warrant protection to some extent, Defendant No. 2 is willing to keep one residential flat admeasuring 896 sq.ft., at a location to be determined by Defendant No. 2 vacant and refrain from creating any third-party rights therein, along with two car parking spaces.

22) Mr. Andhyarujina submits that plan of 1983 relied upon by the Plaintiff are held to be forged and have been set aside by order of this Court in Special Case No.1 of 1988. He submits that the Plaintiff cannot seek to shift her claim from garages to that of car parking spaces by equating the two. That no membership can be granted on the basis of a stand-alone garage. That podium area cannot form part of Plaintiff's entitlement. He accordingly prays for rejection of the Interim Application.

23) In rejoinder, Mr. Sancheti submits that contention of Defendant No.1-Society about annulment of membership of the Plaintiff by the administrator is without any basis as the administrator does not have power to annul any decision taken by the Society. That the Plaintiff's father was impleaded as party after fully appreciating that Plaintiff's rights were likely to be adversely affected as was the case of 8 other members. That the Defendants cannot unilaterally decided not to construct any shop /garages in the building and attempt to frustrate the claim of the Plaintiff by such mutual agreement. That there is no delay in filing the present Suit, as the Development Agreement was executed on 6

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October 2025, thereby giving rise to the cause of action on account of the failure to provide for any premises in favour of the Plaintiff in the proposed building. That when public notice was issued in the year 2022 the Plaintiff had recorded objections whereafter, the Society did not respond making the Plaintiff believe that her claim was accepted.

24) Rival contentions urged on behalf of the parties now fall for my consideration.

25) Defendant No.1 is a housing society, which was earlier known as Pratibha Co-operative Housing Society Ltd. Defendant No.1 was formed with the objective of constructing a residential building on plot of land at Sophia College lane, off Bhulabai Desai Road, Mumbai-400 026. The Society granted membership to those who intended to own and occupy residential flats in the building. Persons intending to become members with Defendant No.1-Society apparently contributed for raising of funds for purchase of land and for construction of the building. Pratibha CHSL's building was accordingly constructed only in a skeleton form comprising of 36 floors, after which its further construction got halted by the Municipal Corporation on account of allegations of violation of planning norms. Some part of the building was apparently demolished in the year 1989.

26) The Plaintiff claims that she applied for membership of Defendant No.1-Society and that the Society granted her membership in respect of (i) one shop at lower-level podium (ii) 22 garages with entire lower level podium. In her Plaint, the Plaintiff has not given details of

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the manner in which she applied for membership of the Society, the amount of consideration that she paid and how decision was taken to admit her as member of the Society. The Plaintiff has relied on two Deeds of Confirmation unilaterally executed and registered by her in the year 1999. Alongwith the said Deeds of Confirmation, the Plaintiff has attached Agreements and Applications for Membership. One Confirmation Deed and Agreement-cum-Application for Membership is in respect of one shop on lower podium whereas the other Deed of Confirmation and Agreement-cum-Application for Membership is in respect of the entire lower-level podium alongwith 22 garages. The Agreements and Applications for Membership are shown to have been signed by Plaintiff's father and Chairman and Secretary of the Society on 28 March 1990. However, Deeds of Confirmation are subsequently registered by the Plaintiff alone on 4 February 1999, which do not bear signatures of any office bearers of the society.

27) The Plaintiff claims to have purchased one shop for consideration of Rs.3,00,000/- and the entire lower-level podium alongwith 22 garages for consideration of Rs.3,30,000/-. For purchase of the shop an amount of Rs.90,000/- is shown to have been paid whereas, the balance amount of Rs.2,10,000/- was agreed to be paid on possession. Similarly, in respect of lower-level podium and 22 garages Rs.99,000/- is shown to have been paid and the balance amount of Rs.2,31,000/- was to be paid on or before possession. The Plaintiff has also relied on 23 separate share certificates. According to her share certificates are issued *qua* one shop and 22 garages.

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28) Thus, the Plaintiff's claim to ownership of one shop and the entire lower-level podium comprising 22 garages in the demolished building is premised upon two Deeds of Confirmation registered on 4 February 1999 (*which, inter alia, incorporate Applications for Membership*) and 23 individual share certificates. On the other hand, Defendants question genuineness of these documents relied upon by the Plaintiff and contend that Plaintiff was never admitted as member of the first Defendant-society. Defendant No.1 has relied on copies of Register-I and Register-J in support of its contention that name of the Plaintiff has not been included therein. It is further contended by Defendant No.1–Society that there is no underlying resolution of either the Managing Committee or the General Body approving the admission of the Plaintiff as a member of the Society. According to Defendant No.1 there was no Managing Committee from 19 December 1988 till appointment of the Administrator in June 1993 and therefore, there is no question of holding any Managing Committee meeting of the society during that period. Defendant No. 1–Society relies upon the Resolution dated 21 August 1993, purportedly passed by the Administrator, which, according to Defendant No. 1–Society, annuls and sets aside all meetings (*Annual as well as Managing Committee*) held from 23 December 1988 till June 1993.

29) Considering the above positions taken by the rival parties, the question of Plaintiff's admission into membership of Defendant No.1-society becomes a disputed question of fact, which would require adjudication through evidentiary trial. At this juncture, this Court can only record a *prima-facie* findings as to whether Plaintiff has established any right *qua* any premises in the demolished building of Defendant

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No.1-society. For recording the *prima facie* findings, the Court first proceeds to consider the documents and circumstances in favour of the Plaintiff, which are as under:

(A) Plaintiff is armed with Share Certificates issued in her name in support of her claim in respect of one shop and 22 garanges.

(B) Plaintiff also has two registered Deeds of Confirmation, by which she has unilaterally confirmed the Agreements-cum-Applications for Membership in respect of one shop and 22 garages. These documents in the form of Agreements-cum-Applications for Membership are shown to have been signed by the Chairman and Secretary of Defendant No. 1–Society. It is the Plaintiff's case that Mr. Rajendra Meghlani, who functioned as the Chairman of Defendant No. 1–Society at the relevant time, had signed and executed the said documents and that today also he happens to be the Chairman of the Society.

(C) Along with the Agreements-cum-Applications for Membership, a Plan is attached, which according to the Plaintiff, is sanctioned by the Municipal Corporation for Greater Mumbai in the year 1983 showing sanction of a shop and 22 garages in the lower level podium. As per the Plan, the area of Shop in indicated as 735 sq.ft carpet area (42 ft x 17.5 ft).

(D) Plaintiff relies heavily on the Judgment and Order dated 26 May 1994 passed by the Maharashtra State Co-operative

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Appellate Court in Appeal No.42 of 1994 which was filed by Defendant No.1-society challenging the injunction order dated 2 December 1993 passed by the 2nd Co-operative Court in Mumbai in Dispute No. 352 of 1993. The Dispute was filed by M/s. Barcley Exports Pvt. Ltd. & 6 Ors. under an apprehension that their rights would get affected on account of non-construction of flats for them in the old building due to action taken by the Municipal Corporation. Interim protection was granted in favour of those members/Disputants by the Co-operative Court in its Order dated 2 December 1993. The society filed Appeal before the Co-operative Appellate Court and in that Appeal, an application for intervention was filed by Plaintiff's father seeking his impleadment claiming that Plaintiff is also a member of the Defendant No.1-society. Mr. Sancheti has relied on observations made by the Co-operative Appellate Court in paragraphs 13 to 17 of the judgment, which read thus:

> **13.** Before concluding my judgment, it is necessary to stage that in this Appeal, the ld. Advocate Mr. Mr. Deshpande filed an application on behalf of his client and requested that his client be joined as party to the dispute being one of the member of the Appellant society, holding allotment of one ship and entire lower level podium with 22 garages, as per agreement and application for membership which are produced in this Appeal and Mr. M.R. Deshpande stated that it is necessary that he be added as party-Respondent in this appeal so that his rights may not be adversely affected without giving him an opportunity of being heard in this Appeal. Both the ld. Advocates for the Appellants as well as for the Respondent Nos.1 to 5 din dot record any objections. Immediately I asked Mr. Punwani the ld. Advocate for the society about about filing of my reply or objections. Mr. Punwani made statement that he has no objection to join the applicant as Respondent in this Appeal. When I asked Shri. P.V. Kamath Advocate for Respondent Nos.1 to 5. Mr.

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Kamath, the ld. Advocate fairly stated that when the Appellant Society has no objection how I can have any objection. Thereafter, immediately I passed an order on the application that application is allowed and the appellant to carry out the amendment in appeal memo to that effect and, therefore Shri. T.G. Gowani i.e. Applicant was joined as party-Respondent No.6 to the appeal.

14. Thereafter, the ld. Advocate Mr. M.R. Deshpande filed documents with say of Respondent No.6 whereunder he produced several documents including a copy of the membership register in Form-I, list of members in Form-J wherein the name of Respondent No.6 is shown as a member of the Appellant Society. He also produced plan signed by the office bearers of the society which is duly approved by the B.M.C. showing position of shop and garages. Copies of say alongwith abovementioned documents were given to the ld. Advocates Shri. Punwani and Mr. P.V. Kamath. Appellants as well as Respondent Nos.1 to 5 have not filed any reply to the say of the Respondent No.6 nor objected to produce the same on record. Mr. M.R. Deshpande argued that since there is talk of sacrificing interest of existing members of society is right may be adversely affected. Therefore, in order to protect his rights no order should be passed whereby his rights could be affected adversely.

15. From the documents produced by the Respondent No.6 as regard for membership etc. which are not objected and/or not disputed by the Appellants as well as Respondent Nos.1 to 5, it appears that the Respondent No.6 is duly admitted as member of Appellant society and he has been allotted shop and entire lower level podium including 22 garages.

16. The ld. Advocate for the Respondent No.6 payed in say that no order be passed by this Hon'ble Court adversely affecting the rights of the Respondent No.6 in regard to the premises allotted to Respondent No.6 and in regard to the right, the Respondent No.6 to put up construction of the shop and the 22 garages and quiet, vacant and peaceful possession of the respondent no.6 in respect of the premises viz. the area earmarked for the shop and 22 garages at podium at lower level i.e. 80" 6" be not disturbed.

While it is true that the rights of Respondent No.6 in regard to the podium allotted to him and his right to put construction of the shop and 22 garages in the property of the society cannot be affected, it is equally true that if there is an scheme prepared by the Appellant-society of reduction in the area of the flat of the members than the Respondent No.6 on par with other members, shall have to sacrifice proportionality in the area of the premises allotted to him.

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> **17.** In the circumstances, I find there is no merit in the appeal and the same is liable to be rejected. Interest of justice requires that the matter pending in the trial court be disposed of early and as soon as possible.

Plaintiff thus contends that when impleadment was sought in the Appeal filed by Defendant No.1 by Plaintiff's father claiming membership of the society, no objection was raised by Defendant No.1-society. This, according to the Plaintiff, is a very strong circumstance in her favour of proof of membership of Defendant No.1-society.

(E) Plaintiff has also relied on judgment and order dated 19/20 March 2003 passed by the Coordinate Bench of this Court in several Writ Petitions filed by Defendant No.1-society and other members challenging the order passed by the Co-operative Appellate Court. This Court has held that every lawfully enrolled member of a housing society has a corresponding right of being provided a tenement by the society. This Court also held that a tenant co-partnership housing society is under a legal obligation to provide a suitable tenement to each of its member and a member of a society has inseparable right to seek a house from the society. This Court emphasized the principle of equality and upheld the rights of those members who were likely to be denied flats in the building on account of restrictions imposed by the planning authority. This Court held that every member of a society has a proprietary interest and a right in the property of the society and that all members must enjoy the fruits together and also suffer losses, if any, together.

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This Court discussed several options for Defendant No.1-society for accommodating all its 35 members which included an option for demotion of the then existing structure and for reconstruction of the entire building and it left open for the Society to take a decision considering the options discussed by the Court.

Plaintiff submits that, when the order passed by the Co-operative Appellate Court is read in conjunction with the order passed by this Hon'ble Court, her right to secure premises in the newly constructed building is clearly established. According to the Plaintiff, Defendant No. 1–Society did not dispute her membership and, in fact, virtually admitted the same before the Co-operative Appellate Court. Further, a coordinate Bench of this Hon'ble Court has upheld the right of every member to secure premises in the Society's building. On a conjoint reading of the two orders, the Plaintiff contends that her right to secure permanent alternate premises, by virtue of her membership in respect of one shop and 22 garages, stands clearly established.

(F) The Society issued public notice dated 11 September 2004 in the newspapers when the old structure was still standing. The notice was issued apparently after the order was passed by this Court on 19/20 March 2003. Plaintiff replied to the Notice dated 11 September 2004 and staked her claim to membership by providing photocopies of Share Certificates and the Deeds of

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Confirmation. Defendant No.1-society maintained silence and did not dispute genuineness of the documents produced by the Plaintiff.

(G) Defendant No.1 published public notice dated 20 July 2022 when it decided to reconstruct the building after demolition of the old skeleton structure. Plaintiff responded to the public notice vide response dated 26 July 2022 claiming membership of Defendant No.1-society and provided copies of documents to the society in support of her claim. She objected to her claim not being reflected in the 'members entitlement' as set out in the Second Schedule to the public notice. After receiving Plaintiff's reply dated 26 July 2022, Defendant No.1 maintained a stoic silence. According to the Plaintiff, if the claim of Defendant No.1 was bogus, the society ought to have responded so, after receipt of reply dated 26 July 2022.

(H) In the Development Agreement, there is some recognition in respect of 22 car parking spaces in which Plaintiff claims interest.

30) Now I proceed to consider the factors which are against the Plaintiff for upholding her claim for membership qua 1 shop and 22 garages, which are as under:

(i) Defendant No.1 has produced 'I' and 'J' Registers in which name of the Plaintiff is missing. These are the statutory

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documents maintained as per the provisions of the MCS Act and the Rules made thereunder. These are the primary documents of proof of membership. No Share Certificate can be issued unless the name of a person is reflected in the membership register. Without name being included in the 'I' and 'J' Registers, the Share Certificates become meaningless. Though Plaintiff contends that the 'I' and 'J' Registers are subsequently prepared/altered, she on her own has not produced copy of the so-called old 'I' or 'J' Registers which allegedly reflected her name. Infact, there is no averment in the plaint that name of the Plaintiff was entered into the 'I' and 'J' Registers.

(ii) There are no underlying Resolutions either by the Managing Committee or by the General Body for admitting Plaintiff as the member of the society. This is another vital document missing from the scene.

(iii) The society was apparently without any valid managing committee at the relevant time and therefore no meetings of the society (*either Annual or Special or of Managing Committee*) have apparently taken place at the relevant time when decision for grant of membership to the Plaintiff could have been taken.

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(iv) Plaintiff was minor, aged 14 years in the year 1990. Under Section 22 of the MCS Act, only a person competent to contract under the Indian Contract Act, 1872 can become a member of the society. Thus there is express prohibition under Section 22 of the MCS Act on minor becoming member of a cooperative society. Therefore, whether membership could at all be granted in the name of Plaintiff becomes questionable.

(v) There is nothing on record to indicate that Plaintiff paid alleged balance consideration of Rs.2,10,000/- for the Shop and Rs.2,31,000/- for 22 garages to the society. This is vital because the society is formed with the sole objective of purchasing the land and construction of a building. The only source of funds for society's activities was contributions from members.

(vi) Since Defendant No.1-society has spent a considerable amount in purchase of land, construction of old structure, demolition of old structure, as well as maintaining and protecting the land, as well as for carrying out the affairs of the society for several decades. These activities would obviously require humongous expenditure which can only be out of contributions made by the members. There is *prima-facie* no material on record to indicate that Plaintiff has contributed any

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amount during the last 4 decades to satisfy expenditure incurred by the society.

(vii) Defendant No.1 had written to the Divisional Joint Registrar and to the State Government informing that though Mr. Tejraj Gowani had claimed membership (*by getting himself impleaded before the Co-operative Appellate Court*), there were no contemporaneous records in the society records to support his claim for membership. Defendant No.1-society therefore contends that mere impleadment in proceedings before the Co-operative Appellate Court in proceedings arising out of interim order does not mean that society ever admitted or did not dispute Plaintiff's claim of membership.

(viii) Though Plaintiffs father was impleaded in Appeal from interim order before the Co-operative Appellate Courts, there is nothing on record to indicate that he participated further in the main proceedings, which ultimately reached this Court. Mere impleadment in Appeal challenging interim order is not to establish claim of membership. Ultimately this Court directed consideration of claims of only 35 members which does not include the Plaintiff.

31) Thus, there are factors both in favour, as well as against the Plaintiff in respect of her claim for membership *qua* one shop and 22

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garages. It is too early at this stage to speculate as to whether Plaintiff would finally succeed in proving her claim of membership or not. At the same time, it cannot be held at this juncture that there is absolutely no material to support Plaintiff's claim of membership. Though not fully proved and concrete, Plaintiff has been able to make at least a suspicion of she being a member of the society. Though the *prima-facie* case in support of her claim of membership is not very strong, and is in fact very weak, there is some material on the basis of which Plaintiff needs to be given an opportunity to prove her claim of membership. The only issue that this Court needs to consider at this stage is whether any interim arrangement needs to be made at this juncture so that Plaintiff's claim is not frustrated altogether.

32) Though the Defendants have raised objection of delay, it is seen that the Development Agreement has been executed on 6 October 2025 after which Plaintiff realised that no provision is made qua her. She accordingly engaged in correspondence with Defendant No.1 and has therefore filed the present Suit.

33) Plaintiff has averred that Defendants are in the process of putting up plans before the Municipal Corporation for approval. This is not denied by both the Defendants. The members of the Society have been awaiting their homes for nearly four decades and are, therefore, keenly desirous of ensuring that the construction of the new building commences and is completed expeditiously. After a long legal battle, the society has taken a call to demolish the old structure and to construct a new building with a view to ensure that they are no violations of

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planning norms and that the members reside in lawfully constructed homes. Between the society members also, disputes have arisen about the manner in which reconstruction process of the building is being carried out. One of the members, Devyani Gulabsi (*apparently supported by few other members*) has filed suit in this Court challenging the appointment of Defendant No.2-developer, as well as, questioning implementation of redevelopment process. This Court has rejected her application for temporary injunction by order dated 6 October 2025. On the same day, Defendant No.1-society has executed Development Agreement with Defendant No.2-developer in which no provision is made for Plaintiff in the proposed building.

34) Thus, in the absence of any interim protection in favour of the Plaintiff, Defendant Nos. 1 and 2 would proceed to obtain approvals to the plans from the Municipal Corporation and undertake construction of the new building, comprising of flats to accommodate the non-disputing members of the Society, as well as flats to be sold in the open market by Defendant No. 2–Developer to recoup the construction cost and to earn profits. In the event interim protection is not granted in favour of the Plaintiff, no flat may remain available in the newly constructed building for being allotted to her in the event she ultimately succeeds, either wholly or partly, in the Suit. The Society would proceed to allot and hand over possession of flats to its undisputed members, while the Developer would, in all likelihood, sell the remaining flats to prospective purchasers. In my view, therefore, an interim arrangement is required to be made to ensure that some premises in the newly

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constructed building are kept aside and are reserved so as not to render the Plaintiff's claim infructuous.

35) The next and more contentious issue between the parties is about the nature and quantum of area to be reserved for the Plaintiff in the new building. Both Mr. Kadam and Mr. Andhyarujina have contended that the new building would not comprise of any commercial premises and that the same would be a pure residential building. Therefore, there is no possibility of reserving any commercial space/shop for the Plaintiff. Under the Development Agreement, the members have been granted 22% additional area over and above the one allotted to them in the old building. It appears that the shop alleged to have been allotted to the Plaintiff on the lower-level podium admeasured 735 sq.ft carpet area. Accordingly, both the Defendants and particularly Defendant No.2-developer has agreed to reserve, on a without prejudice basis, a residential flat equivalent to 896 sq.ft. area (735 sq.ft + 22% additional area) in the new building at the location to be decided by Defendant No.2. Defendant No.2 has also agreed to reserve 2 car parking spaces (*neither garages nor 'covered' car parking spaces*) at the location to be decided in the new building. This would protect the claim of the Plaintiff *qua* the shop on lower podium level to a large extent. I am not impressed by Plaintiff's contention that the society has unilaterally decided to construct only a residential building to her disadvantage. In view of the discussion above, Plaintiff's claim even qua the shop is not full-proof. There is no guarantee that she would in all probabilities succeed in her claim *qua* the shop. As of now, this Court is only balancing the equities

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so as to preserve the subject matter of suit. While doing so, this Court cannot direct the society to alter the plans and construct commercial shop in the building. Therefore Plaintiff's interim prayer for reserving a commercial shop in the new building cannot be granted. I am therefore inclined to make an interim arrangement in favour of the Plaintiff by directing reservation of a residential flat admeasuring 896 sq. ft. with 2 car parking spaces *qua* her claim of shop on the lower podium level of the old structure.

36) So far as the claim towards 22 garages or the entire lower-level podium is concerned, in my view, no interim protection or arrangement needs to be granted/made. This is because no membership can be granted in favour of any person of a co-operative housing society in respect of a stand-alone garage. It is impossible to fathom as to why somebody would purchase 22 garages for operation of one shop. A garage or a car parking space in a building is a mere amenity attached to a flat. A garage or a car parking space does not have any independent existence. If there is no flat, there cannot be any garage or car parking space. Thus, garages or car parking spaces can be allotted only for the purpose of better enjoyment of the flat in the building of the society. At this interim stage, I do not wish to delve deeper into the aspect of permissibility to grant membership *qua* the garage. However, I am of the *prima-facie* view that Plaintiff could not have been granted any membership *qua* 22 garages. Garages/car parking spaces are free of FSI and a part of a common amenity. It is not permissible either for a developer or a society to exclusively sell a garage/car parking space either to an outsider or even to its own member particularly for the

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purpose of grant of independent membership *qua* such garage/car parking space. In ***Ambit Urbanspace*** (supra) Division Bench of this Court has considered the issue as to whether the occupants of garages can claim any independent right in the redevelopment process. This Court has held in paragraphs 34 to 41 of the judgment as under:

> **34)** In the present case, the learned Single Judge has distinguished the judgments in Shree Ahuja Properties Pvt. Ltd. and Rajesh Mishra by observing that the developer in that case had agreed to provide residential premises to the garage occupants, which is not the agreement in the present case. In our view, the core issue before the Single Judge and Division Bench was about permissibility for a garage occupier to obstruct the redevelopment process and entitlement of a developer to seek interim measures against such garage occupier in proceedings under Section 9 of the Act. The case did not revolve around the issue as to whether the garage occupier's entitlement to receive residential or commercial premises. Allotment of residential premises to the garage occupier was just an additional factor in that case. The core issue however was about grant of interim measures in Section 9 proceedings against a garage occupier who was not Society's member and not a signatory to the Development Agreement. **In our view therefore, mere existence of agreement to provide residential premises to the garage occupier in Shree Ahuja Properties Pvt. Ltd. and Rajesh Mishra cannot be a reason to depart from the findings recorded in the said judgment that garages must remain garages, unless they are converted within the framework of law for residential/commercial uses.** In Shree Ahuja Properties Pvt. Ltd. the learned Single Judge has held that '....merely on the basis of long and unauthorized use for commercial purposes, cannot justify continuance of such use and a demand for being provided with alternate space in a structure that does not exist today and for commercial use which is presently unauthorized.' Thus, the issue decided by the learned Single Judge is about right to receive 'alternate premises' in lieu of a garage. The insistence of the garage occupier in that case, who was allotted residential premises, for a commercial shop, was just an additional factor in that case, and we find it difficult to ignore the core ratio in the judgment about right of a garage occupier to have 'any alternate premises' allotted in lieu of a garage unauthorisedly put to commercial use. These findings are upheld by the Division Bench and would bind us. We are therefore in agreement with the views expressed by the learned Single Judge in Shree Ahuja Properties Pvt. Ltd. as confirmed by the Division Bench in Rajesh Mishra that an occupier of a garage, who has

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put the garage to commercial use, cannot insist for grant of alternate space in redeveloped building and more importantly, cannot obstruct redevelopment process by refusing to handover possession of garages in their occupation. Also of relevance is the fact that the garage occupier in that case had purchased the garage and was claiming ownership in the same, whereas in the present case Respondent No. 5 to 8 are not even the owners of the garages and merely claim tenancy rights therein. If an owner of a garage, put the garage to commercial use, cannot to obstruct redevelopment of Society's building, we see no reason how a person claiming mere tenancy rights in a garage can be put on a higher pedestal and can be permitted to cause obstruction to redevelopment, especially when the owner of the garage is cooperating with redevelopment process.

35) The issue of nature of occupation of garage occupier and rights flowing out of such occupation has been dealt with by the Division Bench of this Court in Kankubai Harakhlal Jain (supra). In that case, the subject structure was a garage from which the business of jewellery was being conducted. It was therefore contended that though the premises were colloquially known as a garage but were essentially a commercial structure. Reliance was placed on categorisation of premises in the municipal assessment as 'non-residential'. When the garage occupier raised a claim for allotment of commercial structure in lieu of the garage in his occupation and petitioned this Court, the Division Bench observed in para-4 of the order as under :-

> 4. As far as the structure goes, once it is styled as a garage, then, the user thereof cannot determine the entitlement of the petitioners. The petitioners have failed to establish any legal right in seeking an alternate commercial structure against their occupancy of a garage. The term "garage" has a specific legal connotation. In the Development Control Regulations, it is either understood as an area or premises for repairing of vehicles or parking of vehicles by enclosing the same. **It is, therefore, understood as a parking space enclosed or unenclosed, covered or open area. In these circumstances, we do not think that any relief can be granted to the petitioners once they have no legal right either to occupy a garage and thereafter use it for commercial purpose and based on such a user in the old building, claim alternate commercial area on a permanent basis. Neither any law, rule, regulation or scheme has been shown to us which guarantees such entitlement.**

36) The findings recorded by the Division Bench in Kankubai Harakhlal Jain have been taken note of by the Division Bench while deciding Rajesh Mishra (supra).

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37) In M/s. Calvin Properties and Housing (supra), the learned Single Judge of this Court has decided the petition under Section 9 of the Act by making interim measures of appointment of Court Receiver inter alia in respect of a garage and handing it over for completing the process of redevelopment. The Single Judge relied upon judgment of the Division Bench in Girish Mulchand Mehta and held that interim measures under Section 9 of the Act can be made even against a party who is not a signatory to the arbitration agreement. It has held in para-28 as under :-

> 28. On perusal of the prayers in the arbitration petition, it is clear that petitioner seeks appointment of Court Receiver and mandatory injunction against respondent Nos.2 to 6C in respect of the premises in their occupation. It is thus clear beyond reasonable doubt that any order if passed in this petition as prayed, respondent Nos.2 to 6C would be affected. Such parties are thus rightly impleaded as parties to the present petition and are given an opportunity of being heard and to oppose this petition. Without going into the larger issue whether respondent No.2 to 6C are party to the arbitration agreement or not, not being signatories to the development agreement, in view of the fact that each of these respondents are claiming through respondent No.1 society in respect of the properties of the society in which these members have subservient rights and in view of the fact that any orders that would be passed in these proceedings would seriously affect the rights of the respondent Nos.2 to 6C, such interim measure can be granted by this Court under Section 9 of Arbitration Act against such parties even if they are not parties to the arbitration agreement. In my view there is no merit in the submission made by the learned counsel appearing for respondent Nos.2 to 5 and reliance placed by the learned counsel appearing for the respondents on the Judgment of Supreme Court in case of Indowind Energy (supra) would be thus of no assistance to the respondents.

38) Going further, the learned Single Judge in M/s. Calvin Properties and Housing, has considered the issue as to whether a garage occupier can be granted compensation in the redevelopment process and held that inter se disputes between the garage occupier with the developer or Society needed to be decided in appropriate proceedings and that the Court exercising jurisdiction under Section 9 of the Act cannot adjudicate upon merits of all individual claims of members of the Society. This Court held in para-35 as under :-

> 35. On perusal of the record, it appears that the grievance made by respondent Nos.2 to 6C is regarding the area offered by the

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petitioner to respondent Nos.2 to 6C in lieu of existing area in their occupation. The dispute has been raised also in respect of the compensation in lieu of the garage occupied by one of the member. In support of this submission, respondent Nos.2 to 5 placed reliance on the Judgment of Supreme Court in case of Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd. (supra) on the issue whether flat includes a garage or not. In my view, 31 members of the society not having disputed the provisions of development agreement and the society not opposing the reliefs prayed by the petitioner, dispute if any interse between respondent Nos.2 to 6C with the developer or with the society will have to be decided finally in appropriate proceedings. During the course of argument upon making enquiry from the learned counsel appearing for respondent No.2 to 5 as to whether they were agreeable to appear before the arbitral tribunal and make their claim if any in arbitration proceedings against the developer or the society, respondent Nos.2 to 5 did not agree to appear before arbitral tribunal and to seek redressal of their grievance against the developer or the society. In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can be granted by this Court. This Court is thus not adjudicating on the issue raised by respondent Nos.2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, respondent Nos.2 to 6C cannot stop the redevelopment project.

39) In our view, therefore the principles that can be deduced on combined reading of the judgments in Girish Mulchand Mehta, Kankubai Harakhlal Jain, Shree Ahuja Properties Pvt. Ltd., Rajesh Mishra and M/s. Calvin Properties and Housing are as under:-

(i) An occupier of a garage, who has put the garage to commercial use, cannot insist on allotment of any space in the redeveloped building.

(ii) Occupier of such a garage cannot obstruct the redevelopment process of the building and such obstruction can be removed by the Court by appointing Court Receiver with power of taking over

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possession of garage and handing it over to the Developer for demolition and construction of the new building.

(iii) The Court exercising power under Section 9 of the Act can make interim measures against a person who is not party to the Development Agreement by directing him to handover possession of his premises for completion of redevelopment process.

(iv) Existence of any dispute inter se between members of Society or between a member and his inductee would not deter the Court exercising power under Section 9 of the Act from ensuring that the redevelopment process continues unhindered despite existence of such dispute.

40) In our view, therefore the Court exercising power under Section 9 of the Act would be perfectly justified in making interim measures against an occupier of a garage even though such garage occupier may not be signatory to the Development Agreement.

41) It must also be borne in mind that a garage is usually sanctioned in a building being used as parking facility to the owner of flat/shop in that building. The garages cannot be independently sold to a person not occupying any flat/shop/unit in the building. In the present case, therefore the existence of the five garages in the building are essentially interlinked with the ownership of flats/units by Respondent Nos.2 to 4 in that building. Respondent Nos.5 to 8 claim that they are inducted as tenants in respect of the garages by Respondent Nos. 2 to 4 and in that sense, they admit that Respondent Nos. 2 to 4 continue to possess some rights in respect of the garages in question. By recognising that right, Respondent Nos.5 to 8 have apparently been paying rent to Respondent Nos.2 to 4. This right of Respondent Nos.2 to 4, which is recognised by Respondent Nos. 5 to 8, is clearly interlinked to the other shops/units owned by Respondent Nos.2 to 4 in the Society's building. Thus, the concerned garages are essentially constructed for the purpose of providing parking facility to Respondent Nos.2 to 4, who own other shops/units in the building. Respondent Nos.2 to 4, as members of the first Respondent Society, are bound by the covenants of the Development Agreement and they do not even dispute this position. They are contractually bound to handover possession of their premises in respect of which they have right in the building of the Society. Once they handover possession of shops/units, they are also equally bound to handover possession of garages meant for those shops/units. It cannot be that Respondent Nos.2 to 4 would handover only the possession of shops and units but continue to hold possession of the four garages. Respondent Nos.5 to 8 as well as Respondent No.9 claim privity of contract with Respondent Nos.2 to 4. It is their private arrangement,

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> which will not have any impact on the contractual obligation that binds Respondent Nos.2 to 4 qua the Society and the developer. Therefore, irrespective of the arrangement which Respondent Nos.2 to 4 may have made with Respondent Nos. 5 to 8, once possession of all the shops/units in the building is handed over for redevelopment, it is inconceivable that either Respondent Nos. 2 to 4, or any party claiming through them, can ever continue to hold on to the possession of the four garages constructed for parking facility of Respondent Nos.2 to 4. In our view, therefore the garages constructed for parking of vehicles must go alongwith shops/units for whose benefit the garages have been constructed. The rights, if any, of Respondent Nos.5 to 8 or of Respondent No.9 in respect of the four garages in question would always remain subservient to the developer's right under the development agreement and also to the contractual obligations of the Society.
>
> *(emphasis added)*

37) Mr. Sancheti has sought to rely upon the judgment in ***Ambit Urbanspace*** in support of his contention that the Division Bench has recognised rights of garage occupiers to monetise the same even in respect of the redeveloped building. In my view, the aforesaid observations were made in the judgment having regard to the peculiar facts and circumstances of that case, wherein the garages were being used for commercial purposes and the Developer was willing to allot car parking spaces to the occupants of the garages as a part of bargain to ensure that the garage occupiers vacate the structures in their occupation. The said observations cannot be construed as laying down any general or abstract proposition of law that in every case an occupant of a standalone garage must necessarily be provided with commercial or residential premises in the redeveloped building.

38) Under the provisions of the MCS Act, membership can be claimed only in respect of a 'flat' which is sanctioned in the development

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permission. No membership can be claimed or granted *qua* common amenity spaces. Since a garage or car parking space is not covered by definition of the term 'flat' either under Section 2(a-1) of MOFA or under Section 154B-1(13) of MCS Act, no membership can be granted in respect of mere car parking space. Though Mr. Sancheti has sought to rely upon judgment delivered by me in ***ALJ Residency Co-op. Hsg. Soc. Ltd.,*** even in that judgment, this Court has recognised membership only in respect of godown/storage space, which were sanctioned in the development permission and rejected the claim for membership in respect of balance basement area meant to be used for parking of vehicles. This Court took into consideration the ratio of the judgment in ***Ashiwini Heights CHSL*** (supra) and held that though in certain cases, the sanctioned premises in basement can be considered for membership, the membership needs to be restricted only to the premises which are sanctioned in the development permission. This Court held in paras-45 and 51 of the judgment in ***ALJ Residency CHSL*** as under:

> **45)** In view of the above discussion, I am of the view that there is some sanction to the part of the premises in the basement in the plan dated 16 October 1998 and grant of membership to Respondent No. 1 qua the sanctioned part of the basement cannot really be found fault with. To this extent, the order passed by the Deputy Registrar deserves to be upheld. Grant of membership to Respondent No.1 is not to encourage sale of common amenities by Developers. In Dheeraj Dreams Building No.1 CHS Ltd. vs. Divisional Joint Registrar, Co-operative Societies24 , this Court has held that cooperative society can refuse membership to a buyer if the developer sells refugee are as a residential flat. The judgment is delivered in the context of Section 154B-5 of the MCS Act. Mr. Khandeparkar has also strenuously relied on provisions of Section 154B-5, which provides thus:
>
> **154B-5. Limit on Membership**.— A housing society shall not admit to its Membership persons exceeding the number of flats or plots, as the

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case may be, available for allotment in that co-operative housing society :
Provided that, a plot owners co-operative housing society may admit to its Membership an organization (co-operative housing society, company, association, etc.) of flat purchasers, in case the plot owner had constructed and sold flats as per prevailing rules, in place of original plot owner Member.

Going strictly by provisions of Section 154B-5 of the Act, no buyer of premises which are not a 'flat' within the meaning of Section 154B-1(13) of the Act can become member of the society. Section 154B-5 is inserted by amendment of 2019 to ensure that persons claiming rights in respect of premises in the building which do not qualify as a 'flat' are not granted membership. The provision is aimed at discouraging the developers from selling commmon amenities in a building. In the present case, however, applicability of provisions of Section 154B-5 becomes questionable since the provision is incorporated on 9 March 2019, whereas Respondent No.1 applied for and was intitally granted membership in the year 2009. Also, under Section 154B-1(13) of the Act, 'godown' also can be treated as a 'flat' so long the same is sanctioned by the planning authority [SEE: Ashwini Heights (supra)]. As observed above, the basement premises were on the verge of getting sanctioned as a DPU. Basement area admeasuring 59.02 sq.m. is snctioned by the planning authority as storage space, which is akin to a godown. Therefore, in the peculiar facts and circumstances of this case, Respondent No.1 is entitled to membership qua the sanctioned portion of the basement.

51) Having held that Respondent No.1 is entitled to membership, in my view, it is necessary to clarify the exact premises in respect of which membership needs to be granted to Respondent No.1. It appears that basement was proposed to be constructed both for parking as well as for storage space. Thus, part of the basement appears to be a 'common amenity'. Though the society had shown willingness to regularise the entire basement admeasuring 2700 sq.m. and though the plans for regularization were at an advanced stage, ultimately the regularization proposal has not fructified. The society accuses Respondent No.1 of sabotaging the regularisation process on account of sale of the TDR. This allegation is disputed by Respondent No.1, who submits that the TDR was purchased in the name of the developer and it is unknown as to how the developer dealt with the same. As observed above, premises admeasuring 59.02 sq.m. are already approved in the sanctioned plan dated 16 October 1998 as 'storage space'. Thus, there is some sanction to the premises admeasuring 59.02 sq.m. It also appears to be a fact that the total constructed basement admeasures only 230.30 sq.m. equivalent to 2478.02 sq. ft. Thus, in reality basement admeasuring 2700 sq.m. does not even exist. Therefore, there is no question of

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> granting membership to Respondent No.1 qua basement admeasuring 2700 sq.ft. Considering these peculiar circumstances, in my view, grant of membership to Respondent No.1 is required to be restricted to premises admeasuring 59.02 sq.m. which is equivalent to about 637 sq.ft.

39) The principle of non-permissibility of grant of membership *qua* the premises which do not conform to the definition of the term 'flat', as sanctioned in the development permission, is also reiterated in judgments of this Court in ***Uday Dalal*** (supra) and ***Punam Prashant Dighe*** (supra). Impermissibility to grant membership *qua* common amenities can also be inferred from ratio of judgments of this Court in ***Nehalchand Laloochand Pvt. Ltd.*** and of the Apex Court in ***Nahalchand Laloochand Pvt Ltd. Versus. Panchali CHSL***[14]. In ***Amanul Ekramul Ansari***, this Court has held in paragraph 9 of the judgment as under:

> 9. If the basement and parking areas are outside the FSI component and are treated, under the sanctioned plan, as common areas or appurtenant facilities, they cannot acquire the character of an independent "flat" within the meaning of Section 154B(1)(13) of the MCS Act. A parking space or basement area, unless shown in the sanctioned layout as a self-contained residential or commercial unit, does not satisfy the statutory definition. The conveyance deed, however carefully drafted, cannot override the sanctioned plan or transform a common area into a separate flat for the purpose of claiming membership.

40) In my view therefore, no reservation of any specific premises needs to be made *qua* the claim of Plaintiff of membership in respect of the 22 garages. So far as the claim in respect of the entire lower-level podium is concerned, it is not clear at this stage as to whether the Plaintiff's claim to one shop and 22 garages encompasses the entire

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lower-level podium or whether she is also asserting rights in respect of any additional spaces therein. There is a space for passages around the garages and the shop on the lower level podium. This again is a part of common amenity of the building and Plaintiff cannot claim any exclusive rights in respect thereof. In my view, therefore, nothing needs to be reserved in the new buildings *qua* the claim in respect of any balance space on the lower level podium.

41) In view of the above discussion, the Interim Application deserves to be only partly allowed by directing Defendant Nos. 1 and 2 to reserve the residential flat equivalent to area admeasuring 896 sq. ft. in any part of the new building along with two car parking spaces (*not garages or 'covered' or 'enclosed' car parking spaces*). Plaintiff has made out *prima facie* case only *qua* this aspect and there is no *prima facie* case for reservation of any premises in respect of claim for garages and other spaces in the lower-level podium. During the Course of his submissions, Mr. Sancheti has essentially prayed for prayer clause (b) of the Interim Application though he was not heard giving up other prayers. The prayers in the Interim Application read thus:-

> a. Pass an order and injunction restraining the Defendants, their assignees, officers, agents, and/or representatives from in any manner taking any further steps in furtherance of, or acting upon, the Development Agreement dated 6th October 2025 (Exhibit 'Q' to the subject Suit) and the Supplemental Deed dated 9th October 2025 (Exhibit 'R' to the subject Suit);
>
> b. Pass an order and injunction restraining the Defendants, their assignees, officers, agents, and/or representatives from submitting any plans to the Municipal Corporation of Greater Mumbai or any other authority for sanction without first incorporating and providing for the

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Applicant's entitlement of one shop and the entire lower podium with 22 garages (or equivalent area as per the redevelopment scheme) in such plans;

c. Pass an order and injunction restraining the Defendants, their assignees, officers, agents, and/or representatives from dealing with, alienating, encumbering, or creating any third-party rights, title, or interest in the FSI or development potential attributable to the Applicant's premises admeasuring 8296.37 sq.ft.;

d. Direct the Defendants to disclose and furnish to the Applicant, by way of an Affidavit, copies of all documents, writings, correspondence, plans, sanctions, and minutes of meetings related to the redevelopment of the Defendant No. 1 Society's property;

e. pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to pass an order directing the Defendants to deposit the monetary compensation including the amount of Rs. 10 crores deposited by the Defendant No.2 and any other further sums that may have been deposited by the Defendant No.2 with the Defendant No.1 Society under the Development Agreement dated 6th October, 2025 and Supplemental Deed (copies of which are annexed Exhibits Q and R hereto);

f. Direct the Defendants to deposit the originals of the Development Agreement dated 6th October 2025 (Exhibit 'Q' to the subject Suit) and the Supplemental Deed dated 9th October 2025 (Exhibit 'R' to the subject Suit) in this Hon'ble Court;

g. For ad-interim reliefs in terms of prayer clauses (a) to (f) above;

h. For costs of this Application;

i. For such further and other reliefs as the nature and circumstances of this case may require.

42) In prayer clause-b Plaintiff has sought injunction against Defendants from submitting any plans to the Municipal Corporation without first incorporating and providing for her entitlement of one shop and entire lower Podium with 22 garages. This relief can only partially be granted *qua* one shop and no arrangements need to made for incorporation of any premises in the new building while submitting

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plans to the Municipal Corporation in respect of the lower podium with 22 garages.

43) There is otherwise no warrant for grant of prayer clauses-a, c, d, e and f. Defendants cannot be injuncted from taking further steps in the in pursuance of the Development Agreement dated 6 October 2025 and supplementary deed dated 9 October 2025. As observed above, the members of the society have been awaiting possession of their respective homes for the last 40 years. For the purpose of examining the Plaintiff's claim, which is prima facie not very strong, there is no warrant either to restrain further redevelopment of the building or to issue a mandatory temporary injunction to incorporate any premises qua garages in the plans for construction of new building. Also, the Plaintiff's prayer for an injunction restraining the creation of third-party rights in the FSI/development potential equivalent to her premises admeasuring 8,296.37 sq. mtrs. cannot be granted for the reasons stated hereinabove. The Plaintiff is entitled only to the reservation of one residential premises admeasuring 896 sq. ft. with two car parking spaces in the new building. The Plaintiff's prayer for disclosure need not be granted in view of the limited protection being granted in her favour. However, Defendant No. 2 shall intimate to the Plaintiff the location and specifications of the residential flat admeasuring 896 sq. ft. in the new building. The Plaintiff's prayer for deposit of any amount also need not be granted, since partial relief is being granted in her favour in the form of reservation of one residential flat admeasuring 896 sq. ft. Similarly, the original Development Agreement and Supplementary Agreement need not be deposited before this Court, as sought in prayer clause (f) of

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the Interim Application. Thus, except for the partial relief in the form of reservation of one residential flat admeasuring 896 sq. ft., along with two car parking spaces, no other relief can be granted in favour of the Plaintiff. Plaintiff has neither made a *prima-facie* case nor has demonstrated irreparable injury for grant of any other reliefs at this stage. The balance of conveyance is also against the Plaintiff in respect of reliefs which are not granted.

44) Interim Application accordingly succeeds partly, and I proceed to pass the following order:

i. Pending the hearing and final disposal of the Suit, Defendant No. 2 shall reserve one residential flat admeasuring 896 sq. ft. along with two car parking spaces (*not garages or 'enclosed' parking spaces*) in the proposed building at such location as would be decided by Defendant No. 2 and it shall not create any third-party rights in respect thereof.

ii. Defendant No. 2 shall give an intimation to the Plaintiff as well as file an affidavit in this Court immediately after approval of the plans by the MCGM about the location and specifications of the residential flat and two car parking spaces which are directed to be reserved.

iii. In the event of non-decision of the Suit before obtaining the occupancy certificate in respect of the building, Defendant No. 2 shall hand over possession of the reserved flat and car parking

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spaces to Defendant No. 1 society, which shall continue to keep the same reserved until decision of the suit.

iv. Rest of the prayers in the interim application are rejected.

45) Interim Application is **partly allowed** to the above extent and disposed of. Costs of the Application shall be costs in the suit.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE , J.]

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