

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.364 OF 2026

Gorakshnath Vishnu Waghmare

... Applicant

V/s.

ATUL  
GANESH  
KULKARNI

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KULKARNI  
Date: 2026.10.16  
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1. Olympia Enterprises

2. Mohammed Salim Abdul Gaffar  
Sopariwala

3. Sairabanu Mohammed Salim  
Sopariwala

... Respondent

Mr. Dilip B. Shinde with Mr. Mohan Kumbhar, and Mr.  
Vinay Chavan i/by Mr. Mukund Mane for the  
Applicant.

Mr. K.K. Tripathi for the Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 15, 2026.

PRONOUNCED ON : OCTOBER 16, 2026

**JUDGMENT:**

1. The present Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act"), seeking the appointment of an Arbitrator for adjudication of the disputes and differences stated to have arisen between the parties.

2. The applicant, Gorakshanath V. Waghmare, is relying on the Permanent Alternate Accommodation Agreement dated 24 June 2021. According to him, under the said agreement, the

respondents had agreed to give him Flat No. 1604, having carpet area of 455 square feet, in Olympia Tower, C Wing. The flat was to be given to him without taking any amount and on ownership basis. The applicant says that the building was completed in February 2026, but even thereafter the respondents have not given possession of the flat to him. These facts are stated in the application and in the notice invoking arbitration at pages 69 to 75 of the paper book.

3. The applicant says that, as per the agreement, the respondents were required to give him 15 days' written notice before handing over possession of the flat. However, according to him, no such notice was given and possession was also not handed over. He also claims that the respondents stopped paying transit rent from March 2026, though he had not received the alternate accommodation. From these facts, it appears that disputes have arisen between the parties regarding the agreement. Whether the respondents have committed breach of the agreement and whether the applicant is entitled to possession of the flat or payment of transit rent are matters which will have to be decided according to law. At this stage, while considering appointment of an arbitrator, this Court is not required to finally decide these claims.

4. The notice at pages 69 to 75 shows that the applicant invoked the arbitration clause and suggested the name of Mr. R. M. Haridas, Advocate, for being appointed as the sole arbitrator. The respondents replied by their letter dated 25 May 2026, which is at pages 76 to 78 of the paper book. They did not agree to the appointment suggested by the applicant. Thus, it appears from the

record that the applicant called upon the respondents to proceed with arbitration, but the parties could not agree on the appointment of an arbitrator.

5. The main objection of the respondents is that a dispute relating to the same premises is already pending before the Small Causes Court at Mumbai in R.A.D. Suit No. 423 of 2021. In paragraph 2 of their reply dated 25 May 2026, the respondents have stated that the subject matter mentioned in the arbitration notice is already involved in the said suit. On this basis, they contend that there is a legal difficulty in proceeding with appointment of an arbitrator by referring to Section 8 of the Arbitration and Conciliation Act, 1996.

6. The papers relating to the proceedings before the Small Causes Court, at pages 119 to 179, show that Onkar Namdev Waghmare has claimed that he is a deemed and protected co-tenant of Room No. 10 in Umarbai Chawl. The applicant is Defendant No. 1 in that suit. The plaintiff in the suit claims that the applicant alone cannot claim the tenancy and that he and his family members also have rights in the said premises. The applicant has disputed this claim and has stated that he is entitled to the tenancy of the premises.

7. The fact that the suit is pending before the Small Causes Court is required to be considered. However, the dispute raised in that suit has to be seen separately from the dispute raised in the present application. The suit before the Small Causes Court relates to the rival claims of family members regarding tenancy rights in the old premises. On the other hand, the present application arises

from the agreement dated 24 June 2021, under which the applicant claims that the respondents are required to provide him permanent alternate accommodation. Both proceedings may be connected with the same property and some facts may also be common. But only because another suit is pending, it cannot be said that every dispute arising from the agreement cannot be referred to arbitration.

8. The respondents have also relied upon page 19, sub-clause (J), of the agreement and the Indemnity Bond executed by the applicant on 22 June 2021. They have pointed out that the agreement has been produced before the Small Causes Court and that an application for injunction has also been filed in that suit. These objections need to be considered. However, merely because an Indemnity Bond has been executed, or the agreement has been produced before another Court, it does not mean that the arbitration clause cannot be acted upon. The actual terms of the agreement, the terms of the Indemnity Bond and the reliefs claimed in the pending suit will have to be considered. It is only after considering these matters that it can be decided whether there is any legal reason which prevents the disputes from being referred to arbitration.

9. Section 11 of the Arbitration and Conciliation Act, 1996, empowers the Court to appoint an arbitrator when there is an arbitration agreement between the parties, but the process of appointment cannot be completed. At this stage, the Court has to see whether an arbitration agreement exists between the parties and whether the dispute raised by the applicant can be referred to

arbitration under that agreement. The Court is not required to conduct a full trial or finally decide all the disputed facts and claims arising under the agreement. Ordinarily, these matters are to be decided by the arbitral tribunal, subject to its jurisdiction under the agreement and the law.

**10.** The objection raised by the respondents with reference to Section 8 of the Act also requires consideration. Merely because a civil suit has been filed, it does not mean that arbitration cannot proceed. It has to be examined whether the dispute raised in the suit is the same as the dispute which the applicant seeks to refer to arbitration, whether the parties and their claims are covered by the arbitration agreement and whether any provision of law prevents such reference. On the material presently considered, the objection raised by the respondents, does not establish that the applicant cannot seek appointment of an arbitrator under Section 11 of the Act.

**11.** Considering the written agreement relied upon by the applicant, the notice invoking arbitration and the refusal of the respondents to agree to the proposed appointment, it appears that the applicant has made out a case for appointment of an arbitrator. Whether the applicant is entitled to the flat, whether transit rent is payable, what effect the Indemnity Bond will have and how the pending suit before the Small Causes Court affects the present dispute are matters which need not be finally decided in this application. These questions will have to be decided by the appropriate forum in accordance with the agreement and the applicable law.

**12.** For the reasons stated above, the application deserves to be allowed by appointing an independent arbitrator to decide the disputes arising out of the Permanent Alternate Accommodation Agreement dated 24 June 2021, provided there is no legal bar to referring those disputes to arbitration. Appointment of an arbitrator will not mean that this Court has accepted the applicant's claim that he alone is entitled to the tenancy of the old premises. It will also not mean that the respondents have been held to have committed breach of the agreement or that the applicant is entitled to the flat or the amounts claimed by him. All these questions will remain open and will have to be decided on their merits and according to law.

**13.** In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Lizum Wangdi, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreements referred to above;

Office Address:- 205, 2nd Floor, Arcadia, NCPA Marg, Nariman Point, Mumbai – 400 021.

Email – lizumw@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall

provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as may be indicated by the Learned Sole Arbitrator, for obtaining appropriate directions with regard to the conduct of the arbitral proceedings, including fixing the schedule for filing of pleadings, examination of witnesses, if any, and dates of hearing. At such meeting, the parties shall furnish to the Arbitral Tribunal valid and functional email addresses, together with the mobile and landline telephone numbers of their respective Advocates. Communications sent to the said email addresses shall constitute valid service of correspondence in connection with the arbitral proceedings.

E) All arbitral costs and fees of the arbitration and of the Arbitral Tribunal shall be borne by the parties equally in the first instance. The same shall, however, remain subject to any

final Award that may be passed by the Arbitral Tribunal in relation to costs.

**14.** The Learned Sole Arbitrator shall be at liberty to adjudicate upon the claims and counterclaims, if any, and to determine all questions relating to merits, in accordance with law.

**15.** All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**16.** The Commercial Arbitration Application stands disposed of in above terms.

**(AMIT BORKAR, J.)**