

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

ARBITRATION PETITION NO. 1815 OF 2015

M/s. K. T. Group	... Petitioner
V/s.	
M/s. R.K.S. Co. Operative Housing Society	... Respondent

Mr. K.P. Shah with Mr. Tejas Sangrejkar for the petitioner.
Mr. N. G. Samant i/b Sandeep Mahadik for the respondent.

**CORAM : K. K. TATED, J.
DATED : 22/01/2016**

P.C.:

. Heard learned Counsel for the parties.

2 By this petition, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter will be referred as 'the said Act'), the Petitioner is seeking appointment of Court Receiver in respect of suit building known as Kojagiri on Plot No.5, bearing Survey No.93, CTS No. 302, Pahadi Village, Pahadi School Road No.1, Jay Prakash Nagar, Goregaon (E), Mumbai – 400 060. The following are the prayers in the present petition.

“a) That this Hon'ble Court may be pleased to appoint a Court Receiver along with necessary directions to the Court Receiver to take forceful possession of the building known as Kojagiri on Plot No.5, bearing Survey No.93 CTS No. 302, Pahadi Village, Pahadi School Road No.1, Jay Prakash Nagar, Goregaon (E), Mumbai – 400 060 within the registration district and suburban district of Mumbai City and Mumbai suburban admeasuring of or about 614.2 sq. meters to the present Petitioners for the purpose of

demolition and redevelopment as per the Development Agreement dated 19.11.2013.

- b) That this Hon'ble Court may be pleased to direct the Respondent Society to execute and register the Deed of Assignment, Revocation of Power of Attorney dated 19.11.2013 and a fresh General Power of Attorney in favour of M/s. K.T. Group failing which the necessary directions be issued to the Court Receiver to execute and register the aforesaid documents.*
- c) That this Hon'ble Court may be pleased to direct the Goregaon (East) Police Station to grant police protection in the event the Court Receiver requires the same for taking forceful possession of the aforesaid building.*
- d) That this Hon'ble Court may be pleased to restrain the Respondent Society by way of an injunction from entering into any negotiations and/or redevelopment agreement and/or passing any Resolution with respect to the redevelopment of the society in favour of any third party, pending the Arbitration proceedings.*
- e) Pending the hearing and final disposal of the present petition, this Hon'ble Court may be pleased to declare that the present Petitioners shall not be held responsible for any untoward incident which may take place thereby affecting the stability of the said building;*
- f) Pending the hearing and final disposal of the present petition, this Hon'ble Court may be pleased to restrain the Respondent Society by way of an injunction from entering into any negotiations and/or redevelopment agreement and/or passing any resolution with respect to the redevelopment of the Society in favour of any third party.*
- g) For ad-interim and interim reliefs in terms of prayer clauses (e) and (f) above;*
- h) For cost of the petition;*
- i) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*

3 It is the case of the petitioner that initially the Respondent Society entered into the Redevelopment Agreement dated 19.11.2013

with M/s. K.T. & P.P. Associates for redevelopment of their property. Thereafter, the earlier developer M/s. K.T. & P.P. Associates agreed to assign their rights in favour of the petitioner for development of the suit property. To that effect, the petitioner had made several correspondence to the Society. The Society also principally accepted their proposal and passed resolution dated 17.06.2015 which reads thus:

“RESOLVED that Re-Development project of our Society (R.K.S. CHSL) will be carried out by M/s. K.T. GROUP instead of K.T. & P.P. ASSOCIATES (as per Developers M/s. K.T. & P.P. ASSOCIATES letter dated 30.05.2015).”

4 The learned Counsel for the petitioner submits that thereafter, the respondent society issued letter dated 17.06.2015 giving NOC in connection to development project of RKS CHS Ltd., Goregaon (E), Mumbai – 400 063. The following terms and conditions of the said letter.

- “1) M/s. KT GROUP shall handover current dated one cheque for 11 months rent commencing from the month of February, 2015 plus one month rent as brokerage and shifting charges of each member for disbursement amongst the members on the same date and time of handing over this NOC.*
- 2) M/s. KT GROUP shall arrange current dated cheques towards 100% corpus fund and per Re-development Agreement dated 19th November, 2013 for individual members.*
- 3) M/s. KT GROUP shall arrange current dated cheques towards 100% corpus fund and per Re-development Agreement dated 19th November, 2013 for Society.*
- 4) M/s. KT GROUP shall complete Tripartite Agreement at the earliest but in any case not later than 14/08/2015.*
- 5) On the actual date of Tripartite Agreement on 14th August 2015, whichever is earlier, society will call meeting of*

members for disbursement of cheques towards corpus fund amongst the members & Society for encashment.”

5 The learned Counsel for the petitioner submits that pursuant to the said terms and conditions the petitioner issued cheques of Rs.35 lacs to the respondent society and their members. He submits that it was agreed between the parties that those cheques will be encashed by the society or their members only after executing the tripartite agreement between the petitioner, respondent and earlier developer. He submits that as the respondent society failed and neglected to execute the tripartite agreement, petitioner's bank refused to advance the loan. Hence, those cheques were dishonoured. He submits that thereafter, the respondent society issued terminated the letter dated 08.11.2015. The said letter reads thus:

“
Date: 8th November, 2015
To,
KT Group
6, Madhur, TPS Road,
Babhai,
Borivali (West),
Mumbai – 92.

KIND ATTENTION : ALL PARTNERS OF M/S KT GROUP

SUB: Revocation of NOC.

Ref: Your letter dated 16.10.2015.

Dear Sir,

This is to inform you that in the Special Annual General Body Meeting dated November 8, 2015 the Society has unanimously decided to revoke the NOC dated 17.06.2015 granted to KT Group for Re-development of R.K.S. Co-op. Housing Society.

Thus the Society is no more associated with M/s KT Group for re-development purpose.

You are further advised to remove the Steel fencing and the advertisement board immediately within 10 days from receipt of this letter else the society shall be forced to remove the said fencing and Board with the cost to your account.

*Yours faithfully,
for R.K.S. Co-op. HSG. Soc. Ltd.*

Chairman Secretary Treasurer”

6 The learned Counsel for the petitioner submits that as per original agreement between the earlier developer and the respondent society, the Arbitration clause No.67, which reads thus;

“67.In the event of any dispute or difference of any nature whatsoever arising between the Developers and the Society touching the provisions of the Re-Development Agreement and/or its interpretations, the same shall be settled by mutual discussions and in case it cannot be so settled, the same shall be referred to one arbitrator agreeable to both parties and if no such consensus could be reached, then the same shall be referred to arbitration in terms and under the provisions of the Indian Arbitration and Conciliation Act, 1996.”

7 The learned Counsel for the petitioner submits that as there is dispute arisen between the parties, petitioner has preferred the present petition under Section 9 of the said Act, for reliefs as claimed in the petition. He submits that though there is no written contract between the parties, but considering the several letters exchanged between the petitioner and respondent society as well as resolution passed by the society from time-to-time, the petitioner is entitled the relies under

Section 9 of the said Act. In support of this contentions, the petitioner relies on the judgment of the Apex Court in the matter of *Trimex International FZE Limited v/s. Vedanta Aluminium Limited, India, reported in (2010) 3 Supreme Court Cases 1*. He relies on paragraphs 49 to 57 of the said judgment. He also relies on the Judgment of the Apex Court in the matter of *Bharat Petroleum Corporation Ltd. V/s. Great Eastern Shipping Co. Ltd. reported in (2008)1 Supreme Court Cases 503*. He relies on paragraphs 19 and 20 of the said judgment. He submits that on the basis of these facts and law declared by the Apex Court, this Hon'ble Court be pleased to allow the present petition as prayed by them.

8 On the other hand, the learned Counsel Mr. Samant appearing on behalf of Respondent Society vehemently opposed the present petition. They filed their affidavit-in-reply on 04.01.2016. He submits that the petition as it is filed by the petitioner itself is not maintainable in the court. There is no concluding contract between the petitioner and respondent in respect of redevelopment project. He submits that though the letters were exchanged between the parties and resolution was passed by the society accepting the proposal of the petitioner, but the same was not concluded by executing the agreement. He submits that if there is no concluded agreement between the parties, then petition under Section 9 is not maintainable. He submits that society already issued termination letter dated 08.11.2015. He further submits that even the petition as it is filed by the petitioner is not maintainable in law. He submits that in the present petition, petitioner is seeking the relief for appointment of Court Receiver with the directions to the

demolition of the suit structure and directing the society to execute the redevelopment agreement. He submits that even the prayers cannot be granted, considering the terms and conditions of original redevelopment agreement dated 19.11.2013. Hence, there is no substance in the present petition and same is required to be dismissed.

9 I heard both the sides at length. It is to be noted that in the present proceeding, though the petitioner is relying on several correspondence between the parties that respondent society agreed to execute tripartite agreement with them for redevelopment of their property, admittedly there is no concluding contract between the petitioner and respondent as on today. The present petition is filed by the third party. The redevelopment agreement dated 19.11.2013 is between the respondent society and M/s. K.T. & P.P. Associates. M/s. K.T. & P.P. Associates is not party in the present proceeding. Even the prayers claimed by the petitioner in the present petition cannot be considered under Section 9 of the said Act, which are in the nature of final disposal. The authorities relied by the petitioner in the matter of Trimex International FZE Limited (supra) & Bharat Petroleum Corporation Ltd. (supra) are not applicable to the facts and circumstances of the present case, because the prayers made by the petitioner are such that there is no concluding contract between the petitioner and respondent.

10 Considering these facts, I do not find any substance in the present petition.

11 Hence, Arbitration Petition stands rejected.

(K.K.TATED, J.)