

ATUL

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 321 OF 2016**

Kanta Bhalla & Ors ...Petitioners
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

**WITH
CONTEMPT PETITION (L) NO. 13 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 321 OF 2016**

Lalit Shyam Tekchandani ...Petitioner
Versus
Kanta Ramsharan Bhalla & Ors ...Respondent

**WITH
CHAMBER SUMMONS (L) NO. 74 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 321 OF 2016**

Kanta Bhalla & Ors ...Petitioners
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors
And
Arihant Vatika Realty Pvt Ltd ...Applicant

AND

COMM ARBITRATION PETITION (L) NO. 319 OF 2016

Kanta Bhalla & Ors ...Petitioners
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

WITH

CONTEMPT PETITION (L) NO. 11 OF 2017

IN

COMM ARBITRATION PETITION (L) NO. 319 OF 2016

Lalit Shyam Tekchandani ...Petitioner
Versus
Kanta Ramsharan Bhalla & Ors ...Respondent

WITH

CHAMBER SUMMONS (L) NO. 75 OF 2017

IN

COMM ARBITRATION PETITION (L) NO. 319 OF 2016

Kanta Bhalla & Ors ...Petitioners
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors
And
Arihant Vatika Realty Pvt Ltd ...Applicant

AND

COMM ARBITRATION PETITION (L) NO. 8 OF 2017

Kanta Bhalla & Ors ...Petitioners
Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

WITH
CONTEMPT PETITION (L) NO. 8 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 8 OF 2017

Lalit Shyam Tekchandani ...Petitioner
Versus
Kanta Ramsharan Bhalla & Ors ...Respondent

WITH
CHAMBER SUMMONS (L) NO. 76 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 8 OF 2017

Kanta Bhalla & Ors ...Petitioners
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors
And
Arihant Vatika Realty Pvt Ltd ...Applicant

AND
COMM ARBITRATION PETITION (L) NO. 320 OF 2016

Narendrakumar R Bhalla ...Petitioner
Versus
Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

WITH

CONTEMPT PETITION (L) NO. 12 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 320 OF 2016

Lalit Shyam Tekchandani	...Petitioner
<i>Versus</i>	
Narendrakumar R Bhalla	...Respondent

WITH
CHAMBER SUMMONS (L) NO. 77 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 320 OF 2016

Narendra Kumar R Bhalla	...Petitioner
<i>Versus</i>	
Supreme Constructions & Developers Pvt Ltd & Ors	...Respondent
<i>And</i>	
Arihant Vatika Realty Pvt Ltd	...Applicant

AND
COMM ARBITRATION PETITION (L) NO. 322 OF 2016

Kanta Bhalla & Ors	...Petitioners
<i>Versus</i>	
Supreme Constructions & Developers Pvt Ltd & Ors	...Respondent

WITH
CONTEMPT PETITION (L) NO. 10 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 322 OF 2016

Lalit Shyam Tekchandani	...Petitioner
-------------------------	---------------

Versus

Kanta Ramsharan Bhalla & Ors

...Respondent

WITH

CHAMBER SUMMONS (L) NO. 78 OF 2017

IN

COMM ARBITRATION PETITION (L) NO. 322 OF 2016

Kanta Ramsharan Bhalla & Ors

...Petitioners

Versus

Supreme Constructions & Developers Pvt Ltd &
Ors

...Respondent

And

Arihant Vatika Realty Pvt Ltd

...Applicant

AND

COMM ARBITRATION PETITION (L) NO. 323 OF 2016

Narendrakumar R Bhalla

...Petitioner

Versus

Supreme Constructions & Developers Pvt Ltd &
Ors

...Respondents

WITH

CONTEMPT PETITION (L) NO. 7 OF 2017

IN

COMM ARBITRATION PETITION (L) NO. 323 OF 2016

Lalit Shyam Tekchandani

...Petitioner

Versus

Narendrakumar R Bhalla

...Respondent

WITH

CHAMBER SUMMONS (L) NO. 79 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 323 OF 2016

Narendra Kumar R Bhalla ...Petitioner

Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondents
Ors

And

Arihant Vatika Realty Pvt Ltd ...Applicant

AND

COMM ARBITRATION PETITION (L) NO. 329 OF 2016

Kanta Bhalla & Ors ...Petitioners

Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

WITH

CONTEMPT PETITION (L) NO. 9 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 329 OF 2016

Lalit Shyam Tekchandani ...Petitioner

Versus

Kanta Ramsharan Bhalla & Ors ...Respondents

WITH

CHAMBER SUMMONS (L) NO. 80 OF 2017
IN
COMM ARBITRATION PETITION (L) NO. 329 OF 2016

Kanta Bhalla & Ors ...Petitioners

Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondent
Ors

And

Arihant Vatika Realty Pvt Ltd ...Applicant

WITH
COMM ARBITRATION APPLICATION (L) NO. 80 OF 2016
AND
COMM ARBITRATION APPLICATION (L) NO. 81 OF 2016
AND
COMM ARBITRATION APPLICATION (L) NO. 83 OF 2016
AND
COMM ARBITRATION APPLICATION (L) NO. 84 OF 2016
AND
COMM ARBITRATION APPLICATION (L) NO. 85 OF 2016

Kanta Ramsharan Bhalla & Ors ...Applicants

Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondents
Ors

AND
COMM ARBITRATION APPLICATION (L) NO. 86 OF 2016

Narendrakumar R Bhalla ...Petitioner

Versus

Supreme Constructions & Developers Pvt Ltd & ...Respondents
Ors

AND
COMM ARBITRATION PETITION (L) NO. 191 OF 2017
AND

COMM ARBITRATION PETITION (L) NO. 193 OF 2017

Supreme Construction & Developers Pvt Ltd ...Petitioner
Versus
Narendra Kumar R Bhalla ...Respondent

AND
COMM ARBITRATION PETITION (L) NO. 192 OF 2017
AND
COMM ARBITRATION PETITION (L) NO. 194 OF 2017
AND
COMM ARBITRATION PETITION (L) NO. 195 OF 2017
AND
ARBITRATION PETITION (L) NO. 310 OF 2017
AND
ARBITRATION PETITION (L) NO. 311 OF 2017

Supreme Construction & Developers Pvt Ltd ...Petitioner
Versus
Kanta Ramsharan Bhalla & Ors ...Respondents

Mr Karl Tamboly, *i/b Junnarkar & Associates, for the Petitioner,
Kanta R Bhalla & Narendrakumar R Bhalla.*

Mr Devrat Singh, *i/b Udwadia & Co., for Respondent No. 2 &
Petitioner in all Contempt Petitions, Mr Lalit S Tekchandani.*

Mr Devrat Singh, *i/b Mayur Shikhare, for the Petitioner, Supreme
Construction.*

Mr Sunil I Jayakar, *with Gunjan Jayakar, i/b Miheer S Jayakar, for
the intervenors in all the CHS., Arihant Vatika Realty Pvt Ltd.*

CORAM: G.S. PATEL, J
DATED: 27th April 2017

PC:-

1. There is an error in the order dated 23rd February 2017. That order was passed not only in Arbitration Applications but in the companion linked Arbitration Petitions also. The order of 23rd February 2017 will need to be corrected in its entirety as regards the title. That order will be substituted by an order showing the correct title. The previous order is to be deleted and replaced with an order of the same date showing the correct title, i.e., including both Arbitration Applications and their corresponding Arbitration Petitions. This is a reference to the Arbitration Applications and Arbitration Petitions filed by Kanta Bhalla and others (“**the Land Owners**”).

2. Today I have a group of Chamber Summonses filed by Arihant Vatika Realty Pvt Ltd (“**Arihant Vatika**”), a joint venture partner of the 1st Respondent, Supreme Constructions & Developers Pvt Ltd (“**Supreme Constructions**”). Mr Jayakar for Arihant Vatika points out that his client is directly concerned with prayer clause (n) of every one of the Arbitration Applications filed by the Land Owners. In the Affidavit in Support of the Chamber Summonses by Arihant Vatika, it is stated that Gat No. 51 is an amalgamation of various parcels of lands including Survey No. 51, Hissa Nos. 1, 2, 3 and 4, Survey No. 75, Hissa Nos. A1, A2 and B, Survey No. 74, Hissa No. 6, totally admeasuring about 20,370 sq mts.

3. Arihant Vatika claims to be concerned with Gat No. 51. It says it has a registered Agreement dated 31st March 2016 in respect of Gat No. 51. According to it, except for an area of 2,460 sq mts comprised in Survey No. 74, Hissa No. 6 none of the other

component or constituent parts of Gat No. 51 are the subject matter of the Arbitration Agreement between the Land Owners and Supreme Constructions. Indeed, Arihant Vatika says that even Survey No. 74, Hissa No. 6 cannot be included in the scope of this Arbitration Agreement.

4. What is particularly troubling is that the Land Owners are not and could not possibly have been unaware of the joint venture between Arihant Vatika and Supreme Constructions. On 29th August 2016, long before these Petitions and Applications were filed, the Advocate for the Land Owners sent a notice to eight parties including Supreme Constructions and Arihant Vatika. Arihant Vatika was addressee No. 6. There is a specific reference to Arihant Vatika in paragraphs 13, 14, 19 and 21 of that letter.

5. It is clear having regard to the state of the law that at least in the Arbitration Petitions under Section 9 of the Arbitration & Conciliation Act 1996, the Land Owners would necessarily have had to join Arihant Vatika as a party respondent even if the Land Owners could not join Arihant Vatikas as a respondent to the Arbitration Applications under Section 11 of the Act. The Land Owners' Advocats' notice is, surprisingly, annexed to the Arbitration Application under Section 11, where it has no relevance, but kept out of the Arbitration Petitions, in which it is of signal importance. Suppresses from both the Arbitration Petitions and the Arbitration Applications by the Land Owners is the response dated 10th December 2016 from Arihant Vatika's Advocates in which it is very clearly stated that Arihant Vatika has an Agreement of 31st

March 2016 with Supreme Construction, that this is registered, and that this pertains to most of the lands or parcels in question.

6. On 23rd February 2017, therefore, when the matters were last moved before me, Arihant Vatika was not before this Court. It had no notice. It was not made a party to the Section 9 Petition, though it ought to have been, and it was quite naturally excluded from Section 11 Applications because there is no direct privity between the Land Owners and Arihant Vatika.

7. By keeping these Applications and Petitions together, the land owners were able to get an interim order. Respondent Nos. 1 and 2 were represented. Respondent No. 1 throughout is Supreme Construction. It is true that Supreme Construction did not submit to any order but the fact is that an entity concerned with a vast amount of the land in question was not before the Court. It was given no notice of proceedings before the Court on 23rd February 2017. It is correctly pointed out by Mr Jayakar on behalf of Arihant Vatika today that an order in respect of 70,000 sq ft allegedly unutilized FSI materially affects Arihant Vatika even if Supreme Construction believe it is unaffected by any restraint order in that regard.

8. There is no question of allowing the Land Owners to obtain such an order in this fashion. As far as Arihant Vatika is concerned, the order of 23rd February 2017 is an *ex parte* order. As a general rule, any party against whom an *ex parte* order is passed may apply to have that order varied, modified, recalled or set aside. That is

precisely Arihant Vatika's application in these Chamber Summonses before me today. All that Mr Jayakar says is that before any such order is passed, Arihant Vatika must be heard. He is absolutely correct and there is no room whatever to cavil with this submission.

9. The order of 23rd February 2017 is recalled and vacated immediately.

10. Given the nature in which this matter has proceeded, I now issue the following directions:

- (a) Arihant Vatika will be joined as party respondent to all Arbitration Petitions filed by the Land Owners and Supreme Constructions/Tekchandani;
- (b) The Petitioners in those Petitions will carry out amendment, without need of reverification, on or before 5th May 2017;
- (c) No order will be passed in the Arbitration Applications under Section 11 without hearing Arihant Vatika, which is, for the reasons earlier stated, expressly permitted to intervene even in the Arbitration Applications.

11. Supreme Construction/Tekchandani have, in the meantime, filed their own set of Arbitration Petitions under Section 9. Even though an application for impleadment is not made in those, I have yet directed in clause 10(a) above that Arihant Vatika be made a party respondent to each of those Petitions.

12. No order will be passed in any of these matters unless all three entities/groups (the Land Owners, Supreme Construction and Arihant Vatika) are heard.
13. All amendments to be carried out, without need of reverification, on or before 5th May 2017.
14. Arihant Vatika will be served with legible copies of all Petitions and Applications and Affidavits filed therein.
15. All Chamber Summonses filed by Arihant Vatika for impleadment are disposed of in these terms.
16. List the entire group of Petitions and Applications for directions on 7th June 2017.

(G. S. PATEL, J.)