

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION (L) NO. 341 OF 2018****M/S.City Homes Constructions****..... Petitioner****VERSUS****M/s.Rahimabad Co-operative Housing
Society Ltd.****..... Respondent**

Mr.Praveen Samdhani, Senior Advocate, a/w. Mr.Aditya Shiralkar,
Mr.Viraj Maniar, Mr.Harsh Behany, i/b. Maniar Srivastav Associates
for the Petitioner.

Mr.Tushar Gujjar, a/w. Mr.Deepak Singh, i/b. Solicix Lex for the
Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 5th APRIL, 2018****P.C.**

By this petition filed under section 37 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the order dated 16th March,2018 passed by the learned arbitrator granting various interim measures passed in favour of the respondent (original claimant) in an application filed under section 17 of the Arbitration and Conciliation Act, 1996.

2. The matter was argued for sometime by the learned counsel for the parties.

3. Mr.Samdhani, learned senior counsel for the petitioner on instruction states that his client may be permitted to take measurement

of the work carried out by his client under the development agreement entered into between the petitioner and the respondent before his client hands over the vacant possession of the plot to the petitioner in compliance with the order passed by the learned arbitrator. Learned counsel for the respondent has no objection if the measurement of the work done is carried out by the petitioner if carried out in presence of the authority representative of the respondent including an architect of the respondent within two weeks from today provided the petitioner hands over the vacant possession of the plot in question and shall shift all its material and other infrastructure from the site.

4. The petitioner is permitted to engage an architect for the purpose of taking measurement of the work carried out if any, by the petitioner on the property in question. The petitioner shall give three days advance notice to the respondent before carrying out such measurement. The respondent would be at liberty to depute an authorized representative and also an architect to remain present at the time of taking measurement.

5. Both the parties would be permitted to take measurement of the work done by the petitioner if any. It is made clear that at the time of taking measurement, there shall not be any debate on the amount of work carried out by the petitioner and the same shall be carried out smoothly.

6. The fees and expenses if any, of the architect appointed by the parties shall be borne by the respective parties at the first instance.

The process of the measurement shall be completed within two weeks from today.

7. Learned senior counsel for the petitioner on instruction states that his client would hand over the vacant possession of the plot in question to the respondent and will shift all its material, equipments, labour and contractor if any, placed on site by the petitioner by 5 o'clock on 19th April, 2018. The statement made by the learned senior counsel is accepted as an undertaking to this court.

8. Learned senior counsel further states that his client would file an application under section 17 of the Arbitration and Conciliation Act, 1996 before the learned arbitrator for seeking interim measures including the relief of securing the claim of the petitioner. Statement is accepted. If any such application is made by the petitioner before the learned arbitrator under section 17 of the Act, the same shall be decided on its own merits.

9. In view of the aforesaid statements, the petitioner does not seek to pursue this petition and seeks liberty to withdraw the same. Arbitration petition is allowed to be withdrawn with aforesaid clarification.

10. The parties to act on the authenticated copy of this order. No order as to costs.

[R.D. DHANUKA, J.]