

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 179 OF 2017

Malad Bharat Co-operative Housing
Society Limited

...Claimant

Versus

Pankaj Parikh

...Respondent

ALONGWITH
SUIT NO. 687 OF 2015

Mr. Jitendra S. Jain & Anr.

...Plaintiffs

Versus

Pankaj Parikh & Anr.

...Defendants

WITH
SUIT NO. 535 OF 2015

Mr. Hitendra A. Zaveri & Anr.

...Plaintiffs

Versus

Pankaj Parikh & Anr.

...Defendants

WITH
SUIT NO. 130 OF 2014

Rasilaben Veljibhai Shah

...Plaintiff

Versus

Pankaj Parikh & Anr.

...Defendants

WITH
SUIT NO. 2081 OF 2014
(City Civil Court at Dindoshi)

Vinay Patil

...Plaintiff

Versus

Pankaj Parikh & Anr.

...Defendants

Mr. M. S. Bhandari a/w Mr. Jeetendra Ranawat i/b Waquar Ahmed for the Petitioner in Arbitration Application No. 179 of 2017.

Mr. Amogh Singh i/b D. P. Singh for the Respondent in Arbitration Application No.179 of 2017.

Mr. M. S. Bhandari i/b Pranjali Bhandari for the Plaintiff in Suit No.687 of 2015, Suit No.535 of 2015 and Suit No.130 of 2014.

Mr. Amogh Singh i/b Anil Yadav for the Defendant No.1 in Suit No. 687 of 2015, Suit No. 535 of 2015 and Suit No. 130 of 2014.

Mr. Jeetendra Ranawat i/b Waquar Ahmed for the Defendant No. 2 in Suit No. 687 of 2015 and Suit No. 535 of 2015.

Mr. Vinay Patel, Plaintiff in Suit No.2081 of 2014, in person, present.

CORAM: S. J. KATHAWALLA, J.

DATE: 5th June, 2018

P.C.:

1. Not on board. Upon mentioning, taken on board.
2. The above mentioned proceedings came to be disposed and the entire subject matter of the abovementioned proceedings including the claims of Dr. Anil Mehta and Mr. Jayantilal Gada were referred to arbitration vide order dated 26th February 2018.
3. Pursuant to the order dated 26th February 2018 the parties appeared before the learned Arbitrator on 14th March 2018. The learned arbitrator in his minutes recorded that:-

“2. This problem is compounded in part by the fact that in the first arbitration, the Society is the Claimant whereas in the other arbitrations, the society will be one of the Respondents.”

3.. In light of the above, Parties request a short adjournment to enable them to seek an appropriate clarification in this regard from the Hon'ble High Court. Accordingly, the matter stands adjourned and the parties to intimate the arbitrator if any clarification is sought and the outcome thereof."

4. Thereafter, the Members - Mr. Hitendra Zaveri, Rasilaben Veljibhai Shah, Jitendra S. Jain, Vinay M. Patel, Jayantilal Gada and Dr. Anil Mehta executed individual Consent Affidavits/ Agreements for reference to arbitration on 21st April 2018 with the Developer - Mr. Pankaj S. Parikh and the Society - Malad Bharat Co-Operative Housing Society Limited. The copies of all the individual Consent Affidavits/Agreements are taken on record and marked 'X' collectively for identification.

5. In view of the aforesaid, the Order dated 26th February, 2018, is set aside by consent and abovementioned matters are referred to arbitration which should be treated as two separate references. The reference between the Society - Malad Bharat Co-Operative Housing Society Limited and the Developer - Mr. Pankaj S. Parikh shall be treated as Reference I **AND** the reference between the individual Members, viz. Mr. Hitendra Zaveri, Rasilaben Veljibhai Shah, Jitendra S. Jain, Vinay M. Patel, Jayantilal Gada and Dr. Anil Mehta [as Claimants] and the Developer - Mr. Pankaj Parikh and the Society - Malad Bharat Co- Operative Housing Society Limited [as Respondents] shall be treated as Reference II.

6. Suit No. CC-2081 of 2014 filed by the Plaintiff – Vinay Patel, before the City Civil Court at Dindoshi is by consent transferred to this Court, as the subject

matter of the Arbitration Application No.179 of 2017, Suit No. CC-2081 of 2014, Suit No.687 of 2015, Suit No. 535 of 2015 and Suit No. 130 of 2014 are the same.

7. By consent, the disputes between all the parties, i.e., both the Arbitration references are referred to the sole Arbitrator Mr. Rohaan Cama, Advocate.

8. The disclosure of Mr. Rohaan Cama, Advocate under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (Act No. 3 of 2016) is taken on record.

9. The parties and/or their Advocates shall appear before the learned Arbitrator in his Chambers on 18th June, 2018 at 10.00 a.m. and obtain necessary directions.

10. Arbitration Application No. 499 of 2016 filed under Section 9 of the Arbitration Act shall be treated as Petition under Section 17 of the Act in Reference I and the same shall be heard and decided by the Learned Arbitrator. Without prejudice to the above, the Society shall be at liberty to file fresh applications/petitions under Section 17 of the Act and the same shall be decided by the Learned Arbitrator. Therefore, Arbitration Application No. 499 of 2016 is disposed off accordingly.

11. The Complaint in Suit Nos. 687 of 2015, 535 of 2015 and 130 of 2014 shall be treated as Statements of Claim by the parties and the Written Statement filed, if any, shall be treated as Written Statement of Respondents.

12. The Defendants shall be at liberty to file their counter claim.

13. The Learned Arbitrator shall not grant adjournment/s to the parties unless absolutely necessary.
14. Both the parties shall be at liberty to move for further/additional reliefs before the Learned Arbitrator, the Application for which shall be filed before the Learned Arbitrator when the parties first appear before the Learned Arbitrator after the preliminary meeting.
15. The venue of arbitration shall be at Mumbai.
16. 50% of the cost of arbitration shall be borne by the Developer and the balance 50% shall be borne by the Society in Reference I. Similarly 50% of the cost of arbitration shall be borne by the Developer and the balance 50% shall be borne by the Society and the six individual members equally, viz., those who have filed disputes and those who will file disputes within a period of four weeks from the preliminary meeting held with the learned Arbitrator.
17. Dr. Anil Mehta and Mr. Jayantilal Gada, members of the Society are allowed to file their claims before the Learned Arbitrator and the claims/counter-claim, if any, filed by the parties shall be decided by the Learned Arbitrator.
18. All contentions of the parties are kept open.
19. The Notice of Motions, viz. Notice of Motion (L) No. 761 of 2017 in Suit No. 535 of 2015 and Notice of Motion (L) No. 770 of 2017 in Suit No. 687 of 2015 shall be treated as separate petitions filed before the Learned Arbitrator and the Learned Arbitrator shall decide the same within a period of 12 weeks from the first preliminary meeting. The Notice of Motions, viz. Notice of Motion (L) No. 761 of

2017 in Suit No. 535 of 2015 and Notice of Motion (L) No. 770 of 2017 in Suit No. 687 of 2015 is accordingly disposed off.

20. The Suit No. CC-2081 of 2014 transferred to this Court from City Civil Court, Dindoshi and Suit Nos. 687 of 2015, 535 of 2015 and 130 of 2014 stand disposed off. Arbitration Application No. 179 of 2017 also stands disposed off. All Notices of Motion/ Applications, filed in the above Suit Nos. 687 of 2015, 535 of 2015, 130 of 2014 and CC-2081 of 2014 also stand disposed off.

21. Refund of court fees as per rules.

(S. J. KATHAWALLA, J.)