

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

**CHAMBER SUMMONS NO.960 OF 2017
WITH
CHAMBER SUMMONS NO.1021 OF 2017
IN
SUIT NO.855 OF 2015**

Radha Madhav Co-operative Housing Society Ltd. ...Plaintiff

V/s.

M/s. Millennium Developers & Ors. ...Defendants

Mr. Zaid Ansari alongwith Mr.Mangesh R. Kokare I/by Zaid Ansari & Associates for the Plaintiff.

Mr. Rajiv Singh, Chaitra Rao, Mr.Jatin Sheth I/by Chaitra Rao and Jatin Sheth for Defendant No.1.

Ms. Aruna Kamath Pai or the applicant in CHS No.1021/2017.

CORAM : S.C. GUPTE, J.

DATE : 26th SEPTEMBER, 2018

P.C.:

. This suit is filed by a Co-operative Housing Society seeking a declaration that the Development Agreement executed by it with Defendant No.1 stands cancelled and is null and void and perpetual injunction against Defendant No.1 Developer from obstructing the Plaintiff's redevelopment carried through another agency. The Development Agreement between the parties contains an arbitration agreement, based on which an application has been presented by Defendant No.1 under Section 8 of the Arbitration and Conciliation Act, 1996 (Chamber

Summons No. 960 of 2017) for reference of the parties to arbitration. Simultaneously, an application has been moved for impleadment as party defendant to the suit (Chamber Summons No. 1021 of 2017) by third party investors who have invested for redevelopment of the property which is subject matter of the present suit. During the pendency of these matters, it has been agreed between the Plaintiff society and the first defendant developer that the dispute forming the subject matter of the present suit can go before an arbitral forum. The parties have also agreed to the name of the sole Arbitrator to whom the disputes may be referred. Learned Counsel accordingly request the court to dispose of the chamber summons together with the suit by referring the matter to arbitration in accordance with the agreement between the parties. The application is opposed by the third party applicants, who have sought impleadment. It is their case that they have invested substantial amounts in the project and the society and developer cannot enter into any agreement for reference of the disputes to arbitration. Insofar as the present suit is concerned, it is a matter between the plaintiff society and the defendant developer. In case any third parties want to agitate their rights, they have to seek an appropriate remedy. Disposal of the suit by referring the dispute forming its subject matter to an arbitral forum cannot be withhold on an application by the third party applicants. In the premises, the following order is passed:

- i) Chamber Summons No. 960 of 2017 and Suit No. 855 of 2015 are

disposed of by allowing the parties, i.e. the Plaintiff Society and Defendant No.1 Developer, to refer the subject matter of the present suit to the arbitration of Sole Arbitrator, i.e. Advocate Aditya Mehta, in accordance with the agreement between them.

ii) Refund of Court fees in accordance with the applicable rules.

iii) Since suit is disposed of, Chamber Summons No. 1021 of 2017 does not survive and same is also disposed of.

iv) It is further clarified that the rights and contentions of third party applicants, which are the subject matter of the Chamber summons, are kept open, to be agitated in any appropriate proceeding as the applicants may choose to adopt.

(S.C. GUPTE, J.)