

psv

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

**ARBITRATION PETITION NO.1117 OF 2018**

M/s. Saptrishi Realtors Builders  
And Developers

..Petitioner

Vs.

Nehru Nagar Vijayanta Apartment  
Co-op. Hsg. Soc. Ltd. & Ors.

..Respondents

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Mr.Harinder Toor with Mr.Sameer Chitnis and Mrs.Manjiri Chitnis i/b.  
M/s.Chitnis & Company for Petitioner.

Mr.Raju Singh with Mr.Vinayak Vengurlekar and Mr.Nish Lad i/b.M/s.  
Nair Vengurlekar & Co. for Respondent No.1.

Mr.Rajesh Singh for Respondent No.2.

Mr.Pradeep Thorat for Respondent No.3.

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**CORAM : G.S. KULKARNI, J.**

**DATE : 29<sup>th</sup> NOVEMBER, 2018**

**P.C.:**

Heard learned Counsel for the parties.

2. By this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), the petitioner, who has entered into an agreement with respondent No.1 – Nehru Nagar Vijayanta Apartment Co-op. Hsg. Soc. Ltd. and its members for re-development of the premises of the society, is before the Court seeking reliefs in the nature of interim measures pending the arbitration proceedings. The petitioner has prayed for the following reliefs:-

“a) the Court Receiver, High Court, Bombay, be appointed a Receiver in respect of Flat Nos.3830 and 3832 on the 2<sup>nd</sup> floor of the building as mentioned in Cause Title, occupied by the Respondent No. 2 to 4 as mentioned in the Cause Title of the above Arbitration Petition with all powers under Order XL Rule 1, including the power to take physical possession by use of force, with Police Assistance, of the said Flats/ Tenements in the possession of the said Respondent No. 2 to 4 and handover the same to the Petitioner for the purpose of Re-development of the building of the Respondent No.1;

b) this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay as a Court Receiver in respect of Flat Nos. 3830 and 3832 on the 2<sup>nd</sup> floor of the building as mentioned in Cause Title occupied by the Respondent No. 2 to 4 as mentioned in the Cause Title of the above Arbitration Petition with all powers to take physical possession by use of force or with Police Assistance, of the said Flat/ Tenements in the possession of the said Respondent No. 2 to 4 and after making inventory of articles, if any, lying therein, to handover the possession thereof to the Petitioner for the purpose of Re-development of the building of the Respondent No. 1 and upon completion of Re-development of new building, the Petitioner be allowed to handover possession of Flat/ Tenements to be allotted in the name of Respondent No.2 and to one of the Legal Heirs of a deceased Member of Respondent No.1, Late Mr.Ramu Ranshevere, either to the Court Receiver or to the Respondent No.1, as may be deemed fit and proper by this Hon'ble Court;

c) the Respondent No. 2 to 4 and other Legal Heirs of a deceased Member of Respondent No.1, Late Mr. Ramu Ranshevere not named in this Petition, for want of knowledge of proper identity details, be directed by an Order of this Hon'ble Court to forthwith vacate and handover the peaceful possession of their respective Flats/Tenements, as mentioned in the Cause Title of this Arbitration Petition to the Petitioner for expeditious development of the building of the Respondent No.1 by accepting Agreed Rent, Shifting Charges, Brokerage, Corpus Fund, etc. within the time bound period as directed by this Hon'ble Court and as this Hon'ble Court may deem fit and proper;

d) the Learned Court Receiver be appointed and directed to execute the Individual Agreement on behalf of all/ any of the Legal Heirs of Late Mr.Ramu Ranshevere and to remain personally present for admitting the execution thereof and to complete the Registration process

of the same before the competent Sub-Registrar of Assurances, in the event all/any of the Legal Heirs of Late Mr.Ramu Ranshevere refuse/avoid/neglect/fail to execute, admit the execution of and complete the registration process of the Individual Agreement to be signed between the Petitioner and individual Members of the Respondent No.1, with all the powers to the Learned Court Receiver to execute the directions of this Hon'ble Court in this behalf.”

3. The grievance as made in the petition is primarily against the respondent No.2 and respondent No.3. Respondent No.2 is stated to be the member of the society. Respondent No.3 is the brother-in-law of respondent No.2 who is stated to be in occupation of one of the tenement of the society of the beneficial ownership of respondent No.2 in pursuance of a family arrangement entered between respondent No.2 and respondent No.3 and the other family members. There is a dispute between respondent No.2 and respondent No.3 interalia in respect of this tenement which is subject matter of proceedings in Short Cause Suit No.1376 of 2018 instituted by respondent No.3 in the City Civil Court at Mumbai, wherein respondent No.3 is asserting his rights and entitlement to the said tenement situated in the premises of the society. Learned counsel for the respondent No.2 has stated that an injunction application was moved in the said suit and an ad-interim relief on the same was rejected.

4. Although 19 out of the 20 members have already vacated the premises, it is on account of the *inter se* dispute between respondent

No.2 and respondent No.3, respondent No.3 has refused to vacate the said tenement. For want of respondent No.3 vacating the premises, redevelopment of the premises of the society is held up. It is in these circumstances, the present petition has been filed.

5. Having heard the learned Counsel for the parties, it is clear that it is not in dispute that there is an arbitration agreement between the petitioner, respondent No.1 and respondent No.2. It is also not in dispute that in pursuance of the development agreement entered by the petitioner with the society and its members, out of 20 tenements, 19 have already vacated. Even respondent No.4 is stated to have vacated the premises. The only issue therefore remains is in regard to the premises of the membership of respondent No.2 which are in occupation of respondent No.3. This tenement is not being vacated only due to the *inter se* dispute between respondent No.3 and respondent No.4. It cannot be countenanced that the redevelopment project is held up on account of one member of the society, that too not due to any fault of the society or the petitioner but her family member. In any event respondent No.3 is yet to establish his right, title and interest as the same are required to be established in the proceedings instituted by him in the Civil Court.

6. In the above circumstances, the interest of justice would be served, if following order is passed:-

**ORDER**

- i. The respondent No.3 shall hand over vacant possession of the premises held by him to the petitioner within two weeks from today, however, this shall be subject to the orders and outcome of the proceedings of Short Cause Suit No.1376 of 2018 as filed by respondent No.3 against the respondent No.2 to which the petitioner and respondent No.1 are also the party defendants;
- ii. As regards the transit rent and other charges which would become payable to the members of the respondent No.1 society, as there is serious contest on the entitlement to these amounts between respondent No.2 and respondent No.3, it would be appropriate that the said amounts qua the said tenement are deposited by the petitioner in the suit pending before the City Civil Court. The City Civil Court shall pass appropriate orders in case an application is made for withdrawal of the amount by either of the parties, in which case an adjudication as to entitlement would be required to be undertaken;
- iii. In case the redevelopment is completed before the rights of the parties are adjudicated in the proceedings before the City Civil Court, then it would be appropriate that the status as exists today shall continue to remain in operation to say that the respondent No.3 shall be

put in possession of the premises. Needless to observe that this would be without prejudice to the rights and contentions of the respective claims as made by respondent Nos.2 and 3 and shall be subject to the ultimate outcome of the *inter se* proceedings between respondent Nos.2 and 3.

iv. It is clarified that in making the above order, this Court has not, in any manner considered or commented on the pending dispute between the respondent No.2 and respondent No.3 in the proceedings before the City Civil Court. The City Civil Court shall independently, without being influenced by this order, consider the rival claims of the parties and pass appropriate interim/final orders in the suit.

v. The parties are at liberty to apply before the City Civil Court for early hearing of the suit.

vi. The arbitration petition is disposed of in the above terms however there shall be no order as to costs.

The parties to act on an authenticated copy of this order.

**[G.S. KULKARNI, J.]**