

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

ARBITRATION PETITION NO. 361 OF 2016

M/s.A.S. Corporation

...Petitioner

vs

Shraddha Developers & Ors.

...Respondents

Mr.Makrand Raut I/b. Dipali Mainkar for Petitioner.

None for Respondents.

CORAM : S.C.GUPTE, J.

DATE : 19 DECEMBER 2018

P.C. :

This arbitration petition is taken out under Section 9 of the Arbitration and Conciliation Act, 1996, seeking *inter alia* an appointment of a Court Receiver of the suit property described in Exhibit-Q to the petition.

2 The Petitioner's case is that parties had agreed for development of the subject property under a joint venture agreement. The Petitioner made payment of over Rs.76 lakhs to the Respondents and about Rs.44 lakhs to the other parties on instructions of the Defendant as also incurred expenses of over Rs.23 lakhs for obtaining IOD from the Municipal Corporation of Greater Mumbai.

3 It is submitted that despite the Petitioner having complied with its obligations under the agreement of joint venture, the Respondents unilaterally terminated the joint venture agreement. The Petitioner, in the premises, proceeded to file an application under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') for appointment of an

arbitrator. The application was allowed and the arbitrator was appointed by this court to adjudicate the disputes and differences between the parties. Pending the reference, the Petitioner applied for interim reliefs preventing disposal of the suit property by a petition under Section 9 of the Act. This court was pleased to pass an order of disposing of that petition directing the learned arbitrator to treat the petition as an application under Section 17 of the Act. Until the application was decided by the court, the parties were directed to maintain status quo as of date in respect of the suit property. The learned arbitrator, in his order under Section 17, proceeded to direct the parties to maintain status quo in respect of the suit property and restraining the Respondents from creating any third party right or interest in the suit property. The learned Arbitrator thereafter resigned from his office and on a new petition filed under Section 11 of the Act, a substitute arbitrator was appointed by the court. The arbitrator is seized of the reference as of date. It is the grievance of the Petitioner that in utter disobedience to the interim order passed by this court and continued by the earlier arbitrator under Section 17 of the Act, the Respondents have dealt with the suit property by filing a collusive suit in the City Civil court at Mumbai at its Dindoshi Branch and obtained a collusive decree in terms of a compromise which provides for sale of the suit property by Respondent Nos.1 and 2 in favour of respondent No.3 herein. The decree passed by the Civil Civil Court on the compromise between the parties is produced along with the petition. On these facts, a clear *prima facie* case for appointment of Court Receiver is made out.

4 The petition has been duly served on the Respondents. None, however, appears to show cause. Learned Counsel for the Petitioner has

produced in court an acknowledgement duly signed by the Respondents confirming receipt of notice. Learned Counsel undertakes to file a proper affidavit of service within two weeks from today.

5 In the premises, the arbitration petition is allowed in terms of prayer clause (a).

(S.C. GUPTE, J.)