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

**ARBITRATION APPLICATION (L) NO.147 OF 2019
WITH
ARBITRATION PETITION (L) NO.384 OF 2019**

Parntnagar Ashok Co-operative Housing
Society Ltd.

... Petitioner

V/s.

Shivram Development Corporation
and ors

... Respondents

Mr. Piyush Shah a/w Mr. Vinod Naik i/by V. N. Naik & Co.,
for the applicant/Petitioner.
None for respondent

CORAM : G. S. KULKARNI, J.

DATE : 25TH APRIL, 2019.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] Arbitration Application (L) No.147 of 2019 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which are stated to have arisen under the development agreement dated 21st December, 2006.
- 3] Arbitration Petition (L) No.384 of 2019 is filed by the petitioner

seeking interim measures pending arbitral proceedings.

- 4] The respondents though served are not appearing.
- 5] On 8th April, 2019, this Court had passed the following order in Arbitration Application (L) No.147 of 2019:-

"1. To enable the learned counsel for the applicant to serve the respondents and to file affidavit of service on record, stand over to 15 April 2019. To be listed on the supplementary board.

2. Affidavit of service be placed on record before the returnable date".

- 6] On 15th April, 2019, the following order was passed:-

"1. At the request of learned counsel for the applicant to reserve the respondents, stand over to 22.04.2019.

2.Fresh Affidavit of service to file on record".

- 7] On 22nd April, 2019, this Court had passed the following order:

"1. Mr. Shah, learned counsel for the applicant, submits that respondents are served twice and also in pursuance of the orders dated 8 April 2019 and 15 April 2019 passed by this Court. It is stated that Section 9 petition is also filed by the applicant (being Arbitration Petition (L) No.384 of 2019). It is stated that service of Section 9 petition is already effected on the respondents.

2. List the Arbitration Petition (L) No.384 of 2019, along with this Application on 24 April, 2019.

- 8] Learned counsel for the petitioner submits that in Section 9 petition, affidavit of service is placed on record. Despite service the respondents are not appearing.

- 9] Accordingly these proceedings are taken up for hearing.

10] The case of the applicant is that the development agreement dated 21st December, 2006 came to be entered between the applicant and respondent No.1. A suit was also filed by the petitioner against respondent before the City Civil Court, seeking various reliefs. Thereafter on 14.2.2014, Memorandum of Understanding came to be entered between the applicant and respondent No.1. However, respondent did not comply with the terms and conditions of the Memorandum of Understanding, as also construction did not progress. Accordingly on 11.2.2019, the petitioner terminated the agreement.

11] It is the case of the applicant that the disputes and differences have, thus, arisen between the parties and consequently by applicant's advocate notice dated 16.2.2019, the applicant invoked arbitration agreement between parties, as contained in clause No.45 of the development agreement, which reads thus :-

"All disputes and differences that may arise between the parties hereto in regard to this Agreement, the carrying out of the terms and conditions of this Agreement and/or the interpretation thereof or in any way whatsoever in connection therewith will be referred to the Arbitration (one) Arbitrator if agreed upon by all the parties hereto otherwise to the Arbitral Tribunal of (three) Arbitrators in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and its statutory modifications in force for the time being. The award of the arbitral tribunal will be final

12] By the said notice invoking the arbitration agreement, applicant also set out the names of the proposed arbitrators as can be appointed, to adjudicate the disputes and differences between the

parties. However, there was no response from the respondent to this notice of the applicant. Consequently, Arbitration Application (L) No.147 of 2019, has been filed by the applicant, praying for appointment of arbitral tribunal to adjudicate the disputes and differences between the parties. The applicant has also filed petition under Section 9 of the ACA as noted above and has prayed for interim reliefs more particularly in respect of Flat No.704 B wing, to restrain the respondent No.1 from creating any third party rights in respect of the said flat. There are also other reliefs whereby the petitioner has sought to secure an amount of Rs.5,55,32,164/-.

13] Having heard the learned counsel for the applicant and having perused the averments as made in the memo of application under Section 11 of the ACA, as also of the Section 9 petition, it is clear that there is an arbitration agreement between the parties. It is the case of the applicant that there are disputes which are arisen between the parties and that the petitioner/applicant has a claim against respondent No.1. The applicant, by it's notice dated 16th February, 2019 has invoked the arbitration agreement. The averments as made in these proceedings for the purpose of the reliefs in these proceedings are required to be taken as admitted as respondents have not appeared and the pleadings in the Section 11 Application as also in Section 9 petition, have remained

uncontroverted, In these circumstances, both the proceedings can be disposed of by the following order:-

Order

- i] Ms. Anita S. Castelino, Advocate, is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences between the parties, arising under the development agreement dated 21st December, 2006;
- ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these applications with a copy to be forwarded to both the parties;
- iii] Pending the arbitral proceedings, respondent No.1 is restrained from creating any third party rights in respect of flat No.704 B Wing;
- iv] As regards the other reliefs, the applicant is permitted to move an application under Section 17 of ACA, before the arbitral tribunal, seeking further appropriate interim measures as the facts and circumstances of the case may require;
- v] At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator;
- vi] The arbitral Tribunal shall endeavour to adjudicate application under Section 17 of the ACA which may be preferred by the applicant, as expeditiously as possible preferably within a period of six weeks from the date of its filing
- vii] The learned prospective sole arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as prescribed under Section 29-A of the Act;
- viii) All contentions of the parties including on merits are expressly kept open.
- (ix) Both the Application and the petition are disposed of in the above terms. No costs.

Office to forward a copy of this order to the learned Arbitrator on the following address:-

Amarchand Mansion
1st Lane, Madam Cama Road,
Fort, Mumbai 400 039.
Mobile No.9820067653

[G. S. KULKARNI, J]