

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

ARBITRATION PETITION (LODGING) NO. 1049 OF 2019

HDFC Ventures Trustee Company Ltd. & Anr. ...Petitioner
VS.
New Consolidated Construction Co.Ltd. & Ors. ...RespondentS

Mr.Virag Tulzapurkar, Senior Advocate with Rohaan Cama, Dhawal Mehta, Jasmine Sheth, Abinash Pradhan, Tejasvi Sarvaiya and Viren Mandhe i/b. Wadia Ghandy & Co. for Petitioners.

Mr.Sharan Jagtiani with Nitesh Jain and Atika Vaz i/b. Shardul Amarchand Mangaldas & Co. for Respondent Nos.1 to 5 and 7 to 15.

Mr.Dinyar D. Madon, Senior Advocate and Nausher Kohli, Parag A. Kabadi and Falguni Thakkar i/b. DSK Legal for Respondent No.6.

CORAM : S.C. GUPTE, J.

DATE : 27 SEPTEMBER 2019

P.C. :

Mentioned. Not on board.

1 This arbitration petition, filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeks protective relief in respect of the suit property, which is owned by Respondent No.5. The protective relief in particular affects the rights of Respondent No.6 with whom Respondent No.5 claims to have entered into a transaction in respect of the suit property.

2 Rights of protection are claimed in this matter in pursuance of a shares subscription and a shareholders' agreement between the Petitioners and Respondent Nos.1 to 4. The agreements have an arbitration clause. Mr.Tulzapurkar, learned Senior Counsel appearing for the Petitioners, submits that Respondent No.5, the owner of the suit property, being a subsidiary of Respondent No.1, can be arraigned as a party to the arbitration and also to the present

application, though it is a non-signatory. Considering the fact, however, that Respondent No.6, whose rights are involved in the matter, and who is not a party to the arbitration agreement between Respondent Nos.1 to 4 and the Petitioners, Mr.Tulzapurkar seeks leave to withdraw the arbitration petition with liberty to file a comprehensive suit assailing the transactions and claiming other reliefs against the Respondents.

3 The arbitration petition is, accordingly, dismissed as withdrawn with liberty to adjudicate the grievances, which form the subject matter of the present petition, before an appropriate forum. All rights and connections of the parties on merits are kept open.

4 Mr.Tulzapurkar expresses a grievance that in the meantime, that is to say between today and the date when appropriate proceedings are filed before the civil court and ad-interim reliefs are sought, the Respondents, in particular, Respondent Nos.5 and 6, are likely to alter the status quo *qua* the suit property.

5 Considering the fact that I am of the view that the arbitration court has no jurisdiction in the matter, I am not inclined to grant any ad-interim relief. Any alteration of status quo in the matter shall be for the civil court to consider. Any such transaction shall be subject to the orders of the court.

(S.C. GUPTE, J.)