

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L.) NO.1595 OF 2018**

M/s.Punjalal G. Dave Realtors LLP ..Petitioner
Vs.
Arihant Siddhi Co-operative Housing
Society Ltd. & Ors. ..Respondents

Mr.Sagar Pawar with Ms.Shital Kutwal, Ms.Apurva Thipsay, Ms.Gauri
Joshi i/b. S.K. Legal Associates for Petitioner.
Mr.Shreepad Murthy i/b.Vandana Santara for Respondent No.1.

**CORAM : G.S. KULKARNI, J.
DATE : 16th JANUARY, 2019**

P.C.:

Learned Counsel for the respondent No.1 states that the respondent No.1 has no intention to appoint any new developer and that the respondent No.1 society itself would now be undertaking the redevelopment, without appointing any developer. Statement is accepted.

2. The dispute between the parties has arisen under the development agreement dated 22 October 2013. Case of the respondents is that as there was no satisfactory progress in regard to the petitioner undertaking the redevelopment. The respondent No.1 by its notice dated 3 December 2018 terminated the said agreement. The petitioner contends that they have incurred substantial expenditure including making payment to the earlier developer. It is also not disputed that the

building is in a dilapidated condition and would require urgent demolition/redevelopment.

3. In the aforesaid circumstances and as the agreement is already terminated in the facts of the case, the only remedy which would be available to the petitioner is to institute a proper claim for damages against respondent No.1 in appropriate proceedings. As there is an arbitration agreement between the parties, it is open for the petitioner to invoke the agreement and make appropriate claim.

4. In the circumstances, at this stage no relief can be granted under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”). It is accordingly dismissed, however expressly keeping open all contentions of the parties on merits of the matter.

5. At this stage, learned Counsel for the petitioner submits that the petitioner be permitted to seek reliefs in an application under Section 17 of the ACA as and when arbitral tribunal is appointed. Needless to observe that it would be open to the petitioner to move an application under Section 17 of the ACA and it would be also open to the respondents to contest such application. All contentions of the parties in that regard are expressly kept open.

[G.S. KULKARNI, J.]