

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 27 OF 2018

Atul Shridhar Londhe ...Appellant
Versus
Abhijeet Cooperative Housing Society Ltd. ...Respondent

with
Civil Application no.30 of 2018

Mr.Rajesh Datar i/b. Mr.Rahul Dattatraya Oak, for the Appellant.

Mr.Sagar Joshi, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 12 March 2020

PC.:

1. This appeal under Section 37 of the Arbitration and Conciliation Act,1996 (for short 'the Act') has been filed assailing the order dated 20 June 2018 passed by the learned Principal District Judge, Thane, in Miscellaneous Application no.39 of 2018 filed by the applicant under Section 9 of the Act. By the impugned order the Section 9 application filed by the appellant stands rejected.

2. In the Section 9 application, the appellant had *interalia* prayed for an injunction to restrain the respondent-society to appoint a developer and to undertake further development.

3. Learned Counsel for the respondent informs that after the prayer for an injunction was rejected by the impugned order, the respondent-society appointed a developer who commenced construction and today the construction has almost reached a final stage.

4. Mr.Datar, learned Counsel for the appellant would not dispute that the new developer was appointed and the construction had commenced, however, would assail the impugned order to contend that the grant of injunction now be considered in the present proceedings. I do not agree with Mr.Datar.

5. On hearing the parties and perusal of the record of the present proceedings, it is quite clear that right from the inception of these proceedings, there were no ad-interim orders of any protection in favour of the appellant. Thus, the situation is that neither Section 9 Court nor this Court had granted any injunctory protection to the appellant. Even otherwise the entire immediate grounds are now not available to the appellant to assert these prayers in the present proceeding.

6. It is informed that the parties are already before the Arbitral Tribunal. In this changed scenario, if the appellant intends to have any further reliefs, it would be appropriate that the appellant approaches the Arbitral Tribunal by filing any application/proceedings as permissible in law. This more particularly considering the clear provisions of sub-section (3) of Section 9 of the Act.

7. In the event the appellant has any issue with the constitution and/or functioning of the Arbitral Tribunal, it is always open to the appellant to resort to appropriate proceedings as permissible in law.

8. In the above circumstances, the appeal is disposed of keeping open all the contentions that the parties to be agitated in the arbitral proceedings. No costs.