

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L) NO. 205 OF 2019
IN
ARBITRATION PETITION NO. 813 OF 2017**

Triveni Cooperative Housing Society Ltd	...Petitioners
<i>Versus</i>	
Reliance Estate Developers & Ors	...Respondents

**WITH
COMM ARBITRATION APPLICATION (L) NO. 355 OF 2019**

Triveni Cooperative Housing Society Ltd	...Petitioners
<i>Versus</i>	
Reliance Estate Developers & Ors	...Respondents

Mr Sujit B Shelar, for the Petitioners/Applicants.
Mr Atul Shah, Partner of Respondent No. 1, present in person.

CORAM: G.S. PATEL, J.
DATED: 11th February 2020

PC:-

CONTEMPT PETITION (L) NO. 205 OF 2019:

1. The Respondents are alleged to have committed contempt of a judgment dated 30th August 2018 and an order dated 18th

September 2018 (Exhibit “C” at page 35 and Exhibit “D” at page 90) both passed by RD Dhanuka J. By the judgment dated 30th August 2018 the learned Single Judge dismissed the challenge to an arbitral order under Section 17 of Arbitration and Conciliation Act 1996. There then followed the following directions.

“b). The petitioners are directed to pay the compensation amount payable in accordance with the impugned order dated 3rd November, 2016 passed by the learned arbitrator to be calculated at the rate of Rs.16,000/- per month inclusive for the month of August, 2018 and September, 2018 after deducting the amount paid pursuant to the said impugned order and/or deposited pursuant to the interim order passed by this Court within two weeks from today.

c). The respondent society would be at liberty to withdraw the amount lying with the Office of the Prothonotary and Senior Master deposited by the petitioners pursuant to the order passed by this Court within two weeks from the date of this order.

d). The petitioners are directed to pay compensation at the rate of Rs.16,000/- per month in compliance with the order passed by the learned arbitrator for the month of October, 2018 onwards till the date of handing over the possession of the permanent alternate accommodation every month on or before 10th of each month in advance.

e). The petitioners shall also furnish an unconditional bank guarantee to secure the amount of compensation at the rate of Rs.16,000/- per month from 1st October, 2018 for a period of six months in the name of the respondent society and shall renew the said bank guarantee if the arbitral proceedings are not concluded within six months from 1st October, 2018 during the pendency of the said

arbitration proceedings and for a period of two months from the date of rendering of an award. Such bank guarantee shall be furnished on or before 15th September, 2018.

f). The amounts directed to be paid and/or paid by the petitioners to the respondent towards compensation or any other heads would be subject to the outcome of the award that would be rendered by the learned arbitrator.

g). If the petitioners do not comply with the order passed by the learned arbitrator and by this Court within the time prescribed, the respondent would be at liberty to execute the impugned order dated 3rd November, 2016 passed by the learned arbitrator by proceeding with the Commercial Execution Application No.133 of 2017 and by filing a fresh chamber summons for other appropriate reliefs and to adopt such other proceedings as permissible in law.”

2. Mr Shelar says that there is no compliance with any of these directions. The amount due to the Petitioners is today in excess of Rs. 2,64,96,000/-.

3. The order at Exhibit “D” of 18th September 2018 was made on an application for extension of time. The Court granted two instalments of three weeks each to make the payment required of the arrears of transit rent at Rs. 16,000/- per month. The Court said that no further extension would be granted. There is no compliance with this order either.

4. The 2nd Respondent, one of the partners of the 1st Respondent is present in Court. He states that the 3rd Respondent, one Hemendra Mapara, is absconding. He too is or was a partner of

the 1st Respondent. It was he who was looking after the finances of the project namely the redevelopment of the Applicant society building at 52 and 47, Tilak Nagar, Chembur, Mumbai 400 089. He knows nothing about the 4th Respondent, one Samir Shah.

5. Mr Atul Shah also states that he does not have an Advocate.

6. This excuse of the 3rd Respondent being conveniently absconding has been used time and again and the matter has been delayed since August and September 2018. I am informed that in the meantime, by some process I do not pretend to understand, the Respondents are actually carrying on work on site. Their contractor is one Narayanbhai. Either this gentleman is extremely charitable and is working free, or the partner who is absconding is somehow managing to get money across to the contractor but not to the Petitioners. I find it not in the least credible that Atul Shah could so entirely disclaim all knowledge of the affairs of the firm of which he is a partner, and of his partners themselves.

7. There is absolutely no manner of doubt in my mind that there is a prima facie case made out sufficient to warrant the issue of a show cause notice.

8. Issue notice under Rule 9(1) of the Bombay High Court (Contempt of Court) Rules, returnable on 24th March 2020.

COMM ARBITRATION APPLICATION (L) NO. 355 OF 2019:

9. This Application is under Section 11 of the Arbitration and Conciliation Act 1996. It has been served.

10. The Applicant is a society. There was already a arbitration ongoing between the Petitioner society and the four Respondents in regard to the redevelopment of the society's buildings No. 47 and 52, Tilak Nagar, Chembur, Mumbai 400 089 under a Development Agreement dated 8th September 2006. An Advocate of this Court was appointed as a Sole Arbitrator. He proceeded to the stage of an order under Section 17. A challenge to that order by the Respondents failed and the failure to comply with that order dismissing the challenge is the subject matter of separate contempt proceedings on which I have just made an order.

11. Before the Arbitrator the parties attempted a settlement. This did not fructify and the Arbitrator then recused himself and declined from acting further. In the meantime, there were fresh elections ordered of the society's committee.

12. What remains now is to appoint a substitute Arbitrator to continue and conclude the arbitration.

13. The 2nd Respondent is present. He is a partner of the 1st Respondent. He claims that the 3rd Respondent is absconding being the accused in some other incident.

14. I appoint Mr Farhan Dubash, learned Advocate of this Court in place and instead of the previous Arbitrator. Mr Dubash's contact details are noted below.

Arbitrator/s	Mr Farhan Dubash, Advocate.
<i>Address</i>	11, Hind Rajasthan Building, 4th Floor, AR Allana Marg, Fort, Mumbai 400 001
<i>Mobile</i>	9820506685
<i>Email</i>	farhandubash@gmail.com

15. The time for completion of the arbitration will commence from the date Mr Dubash enters upon the reference to his arbitration. This is in exercise of my discretion since much time has been lost. Mr Shelar will place before Mr Dubash a complete set of the papers including all procedural orders filed up to date. The Respondents will be at liberty to appear in person or through a duly appointed Advocate before Mr Dubash.

16. The Arbitration Application is disposed of in these terms.

(G. S. PATEL, J)