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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 30 OF 2020**

Milan Rasiklal Ajmera

...Petitioner

Versus

KDI Holdings Pvt Ltd & Anr

...Respondents

Mr Harihar Bhave, *i/b Bhave and Company, for the Petitioner.*

Mr Karl Tamboly, *with Viraj Maniar, & Sneha Patil, i/b Maniar
Srivastava Associates, for Respondent No. 1.*

Mr Zain Mookhi, *i/b AKS Legal Consultants, for Respondent No. 2.*

CORAM: G.S. PATEL, J.

DATED: 2nd March 2020

PC:-

1. The Petition is not maintainable. Between the 2nd Respondent society and the 1st Respondent developer there was a redevelopment agreement. This contains the following arbitration clause 34:

“34. **Dispute Resolution:**

34.1 In case any dispute arises between the Society (which shall include disputes or differences involving its office bearers and Members and successors) on the one hand and the Developers on the other hand with respect to the presents of this agreement and/or the Power of Attorney and/or any related documents and/or the carrying

out of the terms and conditions thereof and/or the interpretation thereof or in any way whatsoever in connection therewith the parties shall issue notice for explanation within period of 15 days from the date of any such dispute. The parties shall at the first try and resolve the dispute amicably between themselves. In case if it is not possible to resolve the dispute amicably, the dispute shall be referred to Arbitration of a sole Arbitrator to be appointed jointly by both the parties, if agreed upon by them or in accordance with law. The Arbitrator will have summary powers, and will also be entitled to make interim awards. The Award of the Arbitrator will be final and binding upon the Society (for itself and its Members and successors) and the Developers. The arbitration proceedings shall always be held in Mumbai. Such arbitration shall be carried out in English language and as per the provisions of the Arbitration and Reconciliation Act, 1996 and/or any amendment/modification thereof.”

2. Between the Petitioner, the society and the developer, there is a tripartite agreement for permanent alternate accommodation. This contains clause 19 which reads thus:

“19. It is agreed and understood that the present agreement shall always be read in harmony with the Redevelopment Agreement dated 23rd March 2016, executed between the Developers and the Society and in the event of any conflict between the provisions hereof and the provisions of the Redevelopment Agreement dated 23rd March 2016, the provisions of the Redevelopment Agreement dated 23rd March 2016, shall prevail over the provisions of this Agreement.”

3. Mr Bhave submits that this is a sufficient incorporation by reference of the arbitration agreement in the principal development or redevelopment agreement. I disagree. The decisions of the Supreme Court in *Alimenta SA v National Agricultural Coop Mktg Federation of India Ltd*,¹ *MR Engineers & Contractors Pvt Ltd v Som Datt Builders Ltd*,² and *Inox Wind Ltd v Thermocables Ltd*³ are all to the contrary. A general reference to another or previous document without a special reference to the arbitration provision is an insufficient incorporation by reference of the arbitration clause.

4. The Petition itself is, therefore, not maintainable and is liable to be dismissed on that ground.

5. However, the Petitioners who are present in Court make a statement through their Advocate that they will abide by the same terms and conditions as to payment of GST and undertakings to pay any additional amount as all 27 other members of the society have done; and, further, that possession of their flat will be given to them only upon their executing the necessary undertakings and making the necessary payment. The statement is noted and accepted.

6. The Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)

1 (1987) 1 SCC 615.

2 (2009) 7 SCC 696.

3 (2018) 2 SCC 519.