

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION APPEAL NO. 26 OF 2018

WITH

CIVIL APPLICATION NO. 29 OF 2018

A/W.

ARBITRATION PETITION NO. 3 OF 2019

Umesh Vasant Dalal

.. Appellant/Petitioner

Vs.

M/s. Omkar Buildcon

.. Respondent

Mr. A.M. Kulkarni for the appellant/applicant.

Mr. Vishal C. Ghosalkar for the respondent.

CORAM : G.S. KULKARNI, J.

DATE : AUGUST 17, 2022.

P.C.:

1. This Appeal is filed against the judgment and order dated 6 December, 2017 passed by the learned Principal District Judge, Thane whereby an application filed by the appellant under section 9 of the Arbitration and Conciliation Act stood rejected.

2. This Court (G.S. Patel, J.) had heard the proceedings on 8 January, 2020, when the following order has been passed:

“1. Parties agree that the Petitioner will first take inspection of the seven fats that have been kept available unencumbered for him in the project at Ambernath. This process will be complete within one week from today. Mr Ghosalkar for the Respondent agrees that he will share a copy of the original Occupation Certificate with Mr Kulkarni for the Petitioner.

2. Subject to all these inspections, it is in principle agreed that upon the Petitioner being put in possession of the seven fats, the entire dispute between the parties can be treated as resolved. Both

sides are presently agreeable to this, but for now I will keep this as a non-binding, in-principle understanding subject to later confirmation.

3. List the matter on 16th January 2020.

3. Subsequently, on 15 July, 2022, this Court (R.I. Chagla, J.) passed the following order:

“1. Heard learned counsel for the parties.

2. Mr. Vilas Kanade, partner of Respondent on behalf of the Respondent is present in Court and the Appellant is also present in Court.

3. By an order dated 16th June 2022, this Court had recorded the Agreement of the parties that the Petitioner/ Appellant will take inspection of seven Flats that have been kept available unencumbered for him in the project at Ambernath. It was further recorded that it has been agreed in principle that upon the Petitioner/Appellant being put in possession of the seven flats the entire dispute between the parties can be treated as resolved. It was further submitted that the parties have agreed that the Petitioner/Appellant can take fresh inspection of the seven flats in the project at Ambernath on 17th June 2022. The other issues with regard to payment of property taxes and as to whose liability it is to pay the property taxes was reserved to the next date.

4. Pursuant to order dated 16th June 2022, the Petitioner/Appellant has taken inspection of the seven flats at Ambernath on 17th June 2022. There are certain issues in respect of some of the flats. The Respondent has raised contentions with regard to the payment of society charges and that it is the Appellant's liability to pay society charges and electricity and other dues with regard to the subject flats. The Appellant has also raised the contention of delay in handling over of the subject flats to the Appellant and consideration payable in respect thereof. There are other issues with regard to the Respondents claim for payment due to the Appellant for not disclosing certain details with regard to access to the flat and as a result of which the Respondent had to settled with the adjacent society.

5. Leaving these issues aside, to be determined at a later date, the parties are agreeable for the Appellant to take possession of the subject flats which are 001 and 002 on the ground floor; 101 on the first floor; 203 on the second floor; 304 on the third floor; 402 on the fourth floor and 501 on the fifth floor of the subject building. The possession will be handed over by the Respondent tomorrow i.e. on 16th July 2022.

6. Place the Arbitration Appeal alongwith Arbitration Petition on 4th August 2022, for determining the aforementioned issues.

7. It is made clear that by the Respondent handing over the subject flats to the Appellant, the entire dispute between the parties have not been resolved. The parties are at liberty to file compilation of documents in support of their claims in order for adjudication of the claims on the next date.”

4. Considering the above orders, possession of 7 flats has already been handed over by the respondent to the appellant. Learned counsel for the respondent would rightly submit that in view of the said developments as noted in the above orders, further adjudication of the appeal is not called for, this more particularly that now the disputes which have remained between the parties are monetary disputes namely that the petitioner has a claim against the respondent as also the respondent as counter claim against the petitioner. In fact the appellant has already filed a Section 11 Petition (Arbitration Petition No. 3 of 2019) praying for appointment of an arbitral tribunal for adjudication of such disputes. The said petition is also listed on today's cause-list.

5. Learned counsel for the respondent would fairly state that insofar as Section 11 proceedings are concerned, this Court may appoint an arbitrator, as there is an arbitration agreement between the parties as contained in the agreement in question.

6. In view of the consensus between the parties for appointment of

an arbitral tribunal for adjudication of the monetary claims of the parties against each other, Section 11 proceedings can be disposed of by appointing an arbitrator.

7. Accordingly, both the proceedings are disposed of by the following order:

ORDER

(i) Arbitration Appeal No. 26 of 2018 stands disposed of as infructuous;

(ii) Insofar as Arbitration Petition No. 3 of 2019 is concerned, Mr. Sadashiv S. Deshmukh, Former District Judge is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement in question.

(iii) The learned sole arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iv) Needless to observe that it would be permissible for the respondent to file its counter claim.

(v) At the first instance, the parties shall appear before the

prospective arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(vi) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(vii) All contentions of the parties are expressly kept open;

(viii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Sadashiv S. Deshmukh,
Former District Judge
403, Jupiter, Building No.9, (Gavanndbaugh),
Pokharan Road 2,
Thane (W) 400610
Mob. 9820553525.

8. Disposed of in the above terms. No costs.

9. Civil Application would also not survive, it is accordingly disposed of.

[G.S. KULKARNI, J.]