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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMM. ARBITRATION PETITION (L) NO. 1718 OF 2022

Kiran Purshottamdas Goradia ... Petitioner
Versus
Janak Alias Jaykar Sharad Chandra Doshi
and Ors. ... Respondents

**WITH
COMM. ARBITRATION PETITION NO. 153 OF 2022
WITH
INTERIM APPLICATION (L) NO. 4309 OF 2022
IN
COMM. ARBITRATION PETITION NO. 153 OF 2022**

Jayesh Savla ... Petitioner/
Applicant
Versus
Janak Alias Jaykar Sharad Chandra Doshi
and Ors. ... Respondents

**WITH
COMM. ARBITRATION APPLICATION (L) NO. 1796 OF 2022
WITH
COMM. ARBITRATION PETITION (L) NO. 8798 OF 2022**

Janak Alias Jaykar Sharad Chandra Doshi ... Applicant/
Petitioner
Versus
Jayesh Rameshchandra Savla and Ors. ... Respondents

**WITH
COMM. ARBITRATION APPLICATION (L) NO. 1808 OF 2022
WITH
COMM. ARBITRATION PETITION (L) NO. 9065 OF 2022**

Janak @ Jaykar Sharadchandra Doshi ... Applicant/
Petitioner
Versus
Kiran Purshottamdas Goradia ... Respondent

Mr. Vaibhav Charalwar a/w Mr. Apurva Gupte, Mr. Tejas Agarwal and Mr. Varun Nair i/by IC Legal for the Petitioner in CARBPL/1718/2022.
Mr. Mayur Khandeparkar a/w Mr. Vaibhav Charalwar, Ms. Apurva Gupate, Mr. Tejas Agarwal, Mr. Varun Nair i/by IC Legal for the Petitioner in CARBP/153/2022.

Mr. Nimay Dave a/w Dhiraj D. Chavan i/by Deven Dwarkadas & Partners for the Respondents in CARBP/153/2022.

Mr. Harihar Bhave a/w Ria Jhaveri i/by Bhave & Co. for the Respondent No.5 in CARBP/153/2022 and for Respondent No.3 in CARBPL/8798/2022 and CARBPL/9065/2022.

Mr. P. G. Lad for MHADA.

Ms. Shilpa Redkar for MCGM.

CORAM: G. S. KULKARNI, J.

DATE : 5th APRIL, 2022

PC. :-

1. These are petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') whereby the petitioners who are the tenants of respondent no.1-landlord are before the Court praying for interim measures pending the arbitral proceedings. The building in question which the petitioners/tenants were occupying was a cessed building, hence the Maharashtra Housing and Area Development Authority (for short 'MHADA') has been impleaded as a respondent, as the redevelopment of the building falls under Regulation 33(7) for which a no objection from MHADA was obtained.

2. The facts in the petitions are quite common. Respondent no.1-landlord had decided to undertake the redevelopment of the old

building, known as “Shree Krishna Niwas Building” located at 284, B.A. Khimji Road, Matunga (C. Railway), Mumbai – 400 019. On 22nd January, 2013, Permanent Alternate Accommodation Agreement (for short ‘PAAA’) came to be entered between the petitioners and respondent No.1. As contended on behalf of the petitioners the clauses of such agreements in both the petitions are identical. Respondent no.1 under the PAAA agreed to grant a free of cost tenement admeasuring 2625 sq. ft. to each of the petitioners as specifically set out under clause 5(b) of the said agreements. The arbitration agreement between the parties is contained in clause 29 of the agreements as entered with each of these petitioners.

3. After a no objection was obtained from the MHADA and also after getting the plans approved, respondent no.1 himself has undertaken the redevelopment of the old building, by constructing a new building which is stated to be of 19 floors. The building is almost complete and is ready for occupation. However, admittedly, certain formalities are required to be completed by obtaining further NOC from MHADA for an occupation certificate to be granted by the Municipal Corporation of Greater Mumbai. It is informed by Mr. Dave, learned counsel for respondent no.1 that the interior work of the building has also been completed, lift has been installed and after

all the compliances are made, the Municipal Corporation would be approached by the respondent no.1 for obtaining occupation certificate.

4. When the things are in such position, disputes and differences have arisen between the petitioners and respondent no.1. The disputes are primarily on two counts. Firstly, on the entitlement of the petitioners in respect of the rehabilitation area of 2625 sq. ft. being not provided by respondent no.1. The contention of the petitioner Mr. Jayesh Savla is that flat no. 702 which has a carpet area admeasuring 70.56 sq. mtrs. along with flat no. 801 having a carpet area admeasuring 244 sq. mtrs. needs to be provided to him by Respondent No.1 so as to allot the agreed area of 2625 sq. ft. as per the PAAA. Similarly, insofar as the other petitioner Mr. Kiran Goradia is concerned, his contention is that flat no. 703 having carpet area of 59.26 sq. mtrs. and flat no. 901 having carpet area of 244 sq. mtrs. be allotted to him so as to comply with the requirements of the petitioners' entitlement of 2625 sq. ft. under the PAAA.

5. On the other hand, Mr. Dave, learned counsel for the respondent no.1 would contend that the petitioners cannot claim an entitlement to flat nos. 702 and 703. He submits that their entitlement

would be confined to only flat nos. 801 and 901 respectively. According to Mr. Dave, the area of flat nos.801 and 901 is 2625 sq. ft., which is in fact the entitlement of both the petitioners. Thus, the area of these flats is the dispute between the parties.

6. The second contention as urged by the petitioners, is in regard to the non payment of the transit rent in respect of petitioners. It is the case of Mr. Jayesh Savla that transit rent is due and payable to him from 1st March, 2020, and in regard to the other petitioner Mr. Kiran Goradia, it is due and payable from 1st June, 2020. There is a dispute on such entitlement as a stand is taken by the respondent no.1 that the possession was offered to the petitioners for fitment purposes and hence, once such possession was offered there would not be any liability to pay the transit rent. Such contention urged on behalf of the respondent no.1 has been disputed on behalf of the petitioners. It is the petitioners' contention that so far, the building has not been granted occupation certificate, hence the liability of Respondent No.1 to pay transit rent to the petitioners would not cease to exist.

7. I have heard the parties at length on the nature of the disputes. This Court considering the nature of the disputes was of the opinion that the disputes between the parties could have been easily resolved.

However, it appears that despite efforts, the parties are unable to reach any amicable settlement.

8. There appears to be a serious dispute in regard to the issue of entitlement of the area of the flats and also on the amounts of the transit rent. On such backdrop, the learned counsel for the parties have agreed that the disputes can be referred to arbitration by appointing an Arbitral Tribunal. In these circumstances, in my opinion, the disputes be referred to be adjudicated by an Arbitral Tribunal. Mr. Khandeparkar, learned counsel for the petitioners has contended that the protection which has been granted by this Court in its order dated 24th January, 2022, to the effect that the Court had directed respondent no.1 not to create any third party interest in respect of the area entitled to the petitioners under the PAAA in both the petitions be also continued, till the Section 17 application is heard and decided by the Tribunal.

9. In the course of today's hearing as noted above, the petitioners are seeking entitlement of flat nos. 702 and 703 respectively. There is no dispute in regard to the respondent no.1 offering to the petitioners an entitlement of flat nos. 801 and 901. Thus, in my opinion, it would be in the interest of justice that respondent no.1, be directed not to

create any third party interest of any nature in respect of flat nos. 702 and 703 till the Arbitral Tribunal decides the Section 17 application.

10. Mr. Dave has contended that as far as the respondent no.1 is concerned, his immediate urgency would be to obtain a NOC for occupation certificate from the MHADA and the present disputes ought not to be any impediment for respondent no.1 to obtain an Occupation Certificate. In that regard, the respondent no.1 would be entitled to assert all its contentions before the Arbitral Tribunal.

11. In the aforesaid circumstances, in my opinion, it would be appropriate that the disputes be referred to arbitration and let the Section 9 petitions as filed by the tenants/petitions and also the respondent no.1-landlord be permitted to be converted into applications under Section 17 of the Act and be decided by the Arbitral Tribunal. Hence, the following order :-

ORDER

- (a) Mr. Gautam A. Ankhad, Advocate of this Court is appointed as a sole arbitrator to adjudicate the dispute between the parties which have arisen under the PAAA dated 21st January, 2013 as executed between both the petitioners-tenants and respondent no.1.
- (b) 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 by email id – rgpsm-bhc@nic.in, to be placed on record of this application with a copy to be forwarded to both the parties.

- (c) At the first instance, the parties shall appear before the prospective arbitrator within one week from the date a copy of this order is made available, on a date which may be mutually fixed by the learned sole arbitrator.
- (d) The petitions filed under Section 9 of the Act are permitted to be converted into applications under Section 17 to be adjudicated by the arbitral tribunal. The petitioner is accordingly at liberty to move the tribunal to seek urgent interim reliefs.
- (e) In the meantime, till the Section 17 applications filed by the parties are adjudicated, the respondent no.1 is directed not to create any third party interest in respect of flat nos. 702 and 703, respectively which shall be subject to further orders, which may be passed by the Arbitral Tribunal.
- (f) All contentions of the parties on merits of the disputes are expressly kept open.
- (g) The Arbitral Tribunal shall consider the Section 17 applications as expeditiously as possible and shall pass

appropriate *ad-interim* and *interim* orders.

- (h) Needless to observe that the parties are permitted to file further appropriate pleadings, if the need so arises.
- (i) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (j) All these proceedings are disposed of in the above terms. No costs.
- (k) In view of the disposal of all petitions, nothing survives in the Interim Application (L) No. 4309 of 2022 and is accordingly disposed of.
- (l) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Gautam A. Ankhad, Advocate
Oricon House, 7th floor,
14-K Dubhash Marg,
Fort, Mumbai – 400 023.
Email ID : gautam.ankhad@gmail.com
Mobile No. : 9967661342

[G. S. KULKARNI, J.]