

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 24152 OF 2022
IN
ARBITRATION PETITION NO. 415 OF 2022
WITH
INTERIM APPLICATION (L) NO. 28726 OF 2022
IN
APPEAL (L) NO. 24152 OF 2022
WITH
INTERIM APPLICATION NO. 3566 OF 2022
IN
APPEAL (L) NO. 24152 OF 2022

Bhagwandas Gupta & Anr ...Appellants
Versus
Relcon Infraprojects Ltd & Ors ...Respondents

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Mr Anil D'Souza, *with Valentine Mascarenhas, i/b Fortis India Law,
for the Appellants.*
Mr Karl Tamboly, *with Akanksha Mishra, i/b Dinanath Tiwari, for
Respondents Nos. 1&2.*
Mr Sarosh Bharucha, *with Ameet Mehta, Jayashri Manjrekar &
Smriti Pal, i/b Solicis Lex, for Respondent No. 3.*
Ms Nayna Rane, *i/b Elixir Legal Services, for Respondent No. 4.*
Mrs Rekha Rane, *IInd Assistant, Court Receiver, present.*

**CORAM G.S. Patel &
 Gauri Godse, JJ.
DATED: 17th October 2022**

PC:-

1. The directions in our order of 6th October 2022 have been complied with. All occupants/members have delivered possession of their respective tenements to the Society, which, in turn, has delivered possession to the Developer. The Court Receiver confirms this. The further assistance of the Court Receiver is not required. The developer will pay the Court Receiver's costs, charges and expenses. The Court Receiver is not required to pass accounts.

2. Mr D'Souza for the Appellants maintains that there is an issue of law *inter alia* regarding the scope and ambit of Section 9(3) of the Arbitration and Conciliation Act 1996 that arises. His formulation is that once there is a Section 11 Application filed or an arbitration is pending, then a Court considering a Section 9 Petition should not make an order under Section 9 without giving sufficient reasons why the arbitral process is insufficient or inadequate in regard to those reliefs.

3. The question may be more than somewhat academic, given that the operative portion of the impugned order of 15th July 2022 is for delivery of possession and the consequences if possession is refused or obstructed. As we noted this has been worked out.

4. Nonetheless, Mr D'Souza maintains that his instructions are to press the Appeal for the question of law that, according to him, arises.

5. Hence, admit.

6. The appearing Respondents waive service. The present Appeal memo paper book is sufficiently complete.

7. The Court Receiver's site report is taken on record and marked "X" for identification with today's date.

8. List the Appeal for directions on 14th November 2022 *inter alia* for fixing a date for final disposal.

INTERIM APPLICATION (L) NO. 28726 OF 2022:

9. This Interim Application seeks to amend the Appeal to place on record a copy of the impugned order. The Appeal was filed without a copy of the impugned order since the order was delayed for reasons beyond the control of the learned single Judge.

10. The Interim Application also seeks to add grounds. These are, Mr D'Souza submits, necessary because they were formulated only after a copy of the order became available.

11. Accordingly, leave to amend. Amendment is to be carried out without need of reverification within two weeks from today.

12. The Interim Application is made absolute and is disposed of in these terms. No costs.

INTERIM APPLICATION NO. 3566 OF 2022:

13. The Interim Application seeks a stay of the impugned order. The Interim Application is clearly infructuous in view of the order that we have passed above.

14. The Interim Application is disposed of in these terms. No costs.

(Gauri Godse, J)

(G. S. Patel, J)