

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

COMMERCIAL ARBITRATION APPLICATION NO. 99 OF 2020

Seena Niwas Co-op.Hsg.Society Ltd.	...Applicant
vs.	
Maresh Developers Ltd.	...Respondent

WITH
**COMMERCIAL ARBITRATION PETITION (L) NO. 157 OF 2020
(NOT ON BOARD, TAKEN ON BOARD)**

Maresh Developers Ltd.	...Applicant
vs.	
Seena Niwas Co-op.Hsg.Society Ltd.	...Respondent

Mr.Ashwin Hawelkar for Applicant in CARAP 99/2020 and for Respondent in CARBPL 157/2020.

Mr.Ram U. Singh for Respondent in CARAP 99/2020 and for Petitioner in CARBPL 157/2020.

CORAM : G. S. KULKARNI, J.

DATED : 8 JUNE 2022

P.C. :

. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 whereby the Applicant has prayed for the appointment of an arbitral tribunal for adjudication of disputes and differences which have arisen between the parties under the Development Agreement dated 18 December, 2015. The agreement pertains to redevelopment of the premises of the Applicant situated at Chembur. It transpired that on 29 July 2019, the Applicant terminated the said development agreement. The case of the Applicant in the present application is that there are claims of the Applicant and more particularly,

as set out in the invocation notice to the arbitration dated 23 August 2019, whereby the Applicant contends that an amount of Rs.3,12,00,000/- is payable by the Respondent to the Applicant being the default compensation as would be payable under Clause (10)(b) of the development agreement in question.

2. The invocation notice was responded on behalf of the Respondent by its advocate's letter dated 12 September 2019. The Respondent contends that there was no breach on behalf of the Respondent in undertaking the redevelopment project. However, the arbitration agreement has not been disputed by the Respondent. In paragraph 7 of the said reply, the Respondent has in fact stated that the name of the arbitrator as suggested on behalf of the Applicant in the invocation notice was not agreeable to the Respondent.

3. It is, on such premise, the present application has been filed by the Applicant contending that the parties could not agree in appointing an arbitral tribunal, hence, this Court needs to exercise jurisdiction under Section 11(6) of the Act and appoint an arbitral tribunal.

4. Learned Counsel for the Respondent has contended that the Respondent has filed a Section 9 petition praying for interim measures pending the arbitral proceedings, being Commercial Arbitration Petition (Lodging) No.157/2020. It appears that on such petition, an order came to be passed on 19 March 2020, i.e. almost four days prior to the lock down declared on account of the outbreak of the Covid-19 pandemic. By such order, learned Prothonotary had directed the Petitioner (Respondent herein) to remove office objections by 30 April 2020. However, as the lock

down was in force and as the normal functioning of the Courts stood affected, the objections could not be removed. It appears in such circumstances the proceedings came to be dismissed for non-removal of office objections. In view of the orders passed by the Full Bench of this Court in **Court on its own motion – Suo Motu PIL 1 of 2021** as also considering the orders of the Supreme Court in **Re Cognizance for Extension of Limitation, (2022) 3 SCC 117**, the Section 9 petition, as filed by the Petitioner, needs to be restored. It is, accordingly, restored to the file of the Court.

5. Insofar as Section 11 proceedings are concerned, there appears to be no dispute that there is an arbitration agreement between the parties as contained in Clause 37 of the development agreement. In fact taking recourse to the arbitration agreement, the Respondent has filed the Section 9 petition as noted above. There also does not appear to be any dispute on the invocation of the arbitration agreement vide notice dated 23 August 2019. It is thus clear that the requirements for this Court to exercise jurisdiction under Section 11(6) of the Act for appointment of arbitral tribunal on account of the failure of the parties to agree for appointment of an arbitral tribunal are eminently present. The Section 11 application accordingly needs to be allowed.

6. Insofar as the Section 9 petition is concerned, no interim orders were passed and in fact, as noted above, the same came to be dismissed on 30 April 2020 and now by the present order, it has been restored. In my opinion, it would be in the interest of justice that the Respondent is permitted to espouse the reliefs, as prayed for in the Section 9 petition by filing an appropriate application under Section 17 of the

Arbitration and Conciliation Act. As a result of the above discussion, in my opinion, both the proceedings can be disposed of by the following order :

ORDER

(i) Smt.Justice Vasanti Naik (Retd.) is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Development Agreement dated 18 December 2015;

(ii) 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;

(iii) Section 9 petition is disposed of with liberty to the Respondent to file an application under Section 17 before the arbitral tribunal praying for interim measures including for prayers as made in the Section 9 petition. All contentions of the parties in that regard are expressly kept open.

(iv) 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;

(v) The fees payable to the arbitral tribunal shall be as

prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion;

(vi) Needless to observe that even if the Respondent has any counter-claim, it is open for the Respondent to raise such counter-claim before the arbitral tribunal;

(vii) The application under Section 11 and the petition under Section 9 are disposed of in the above terms. No costs;

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

Hon'ble Smt. Justice Vasanti A. Naik (Retd.),
"322, Verma Chambers,
Homjee Street, Horniman Circle,
Fort, Mumbai.
Mobile 9822472080

(G.S. KULKARNI, J.)