

*Esha*

**IN THE HIGH COURT OF BOMBAY AT GOA**

**APPEAL UNDER ARBITRATION NO. 6 OF 2021**

M/S SHREE BALAJI CONCEPTS,  
THR. ITS CONST. ATTORNEY.,  
MAHABALESHWAR R. HEGDE ... APPELLANT  
VS  
NITESH HOUSING DEVELOPERS  
(P) LTD. AND ANR. ... RESPONDENTS

\*\*\*\*\*

Mr. Devidas J. Pangam with Mr. Parikshit Sawant, Mr. Shubham Priolkar and Mr. G. Kerkar, Advocates for the Appellant.

Mr. Shivan Desai with Mr. Jatin Ramaiya, Advocates for the Respondents.

**CORAM: B.P. COLABAWALLA, J.**

**DATED: 23<sup>rd</sup> JANUARY 2023**

**ORAL ORDER:**

1. The above Arbitration Appeal is filed under Section 37 (1)(c) of the Arbitration and Conciliation Act, 1996 [for short, “**the Arbitration Act**”] challenging the order dated 22.11.2019, passed by the Hon’ble District Judge, South Goa at Margao in Arbitration Application No. 14/2019.

2. The Appellant before this Court was the original Respondent in the Arbitration proceedings. The Respondents herein were the

original Claimants. For the sake of convenience, I shall refer to the parties as they were arrayed before the Arbitral Tribunal.

3. Originally, the Arbitration was invoked by the Claimants [Developers] seeking specific performance of the Development Agreement dated 28.01.2010 read with the Addendum dated 04.01.2013. Disputes arose between the parties because the Respondent-Owner terminated these Agreements and which was *inter alia* challenged in the Arbitration proceedings.

4. In the Arbitration proceedings, the Respondent also filed a counterclaim seeking restoration of the possession and in aid thereof, they filed an Application for interim relief which was partly allowed vide order dated 24.10.2018. The order dated 24.10.2018 can be found on page 170 of the paper book. By the said order, the Arbitral Tribunal directed the Claimants [the Respondents herein] to return the title documents of the suit property to the Respondent [the Appellant herein] and further not to create any third party rights in relation to the suit property. This order was challenged by filing an Appeal under Section 37 of the Arbitration Act, which was dismissed on 21.12.2018. This was further challenged in this Court by filing a Writ Petition. That Writ Petition was also dismissed by a speaking order dated

21.09.2021. It is, therefore clear, that the order passed by the Arbitral Tribunal on 24.10.2018 has attained finality.

5. Since the Claimants did not return the title documents to the Respondent, the Respondent filed an Application before the Arbitral Tribunal under Order XXXIX, Rule 11 of the CPC read with Section 17 (2) of the Arbitration Act [as it applies to the State of Maharashtra and Goa] seeking to strike out the statement of claim filed by the Claimants before the Arbitral Tribunal. This Application was allowed by the Tribunal vide its order dated 01.07.2019 and it was ordered that the statement of claim filed by the Claimants stood dismissed. However, by the same order, the Claimants were allowed to contest the counterclaim lodged by the Respondent against the Claimants.

6. Being aggrieved by this order passed by the Arbitral Tribunal, the Claimants challenged the same under Section 34 of the Arbitration Act before the District Court, South Goa at Margao by filing Arbitration Application No. 14/2019. The District Court, South Goa at Margao allowed the Application on the ground that the Arbitral Tribunal had no jurisdiction to dismiss the statement of claim by resorting to the provisions of Order XXXIX, Rule 11 of the CPC. The District Court further held that the order passed by

the Arbitral Tribunal was a non-speaking order insofar as it did not deal with the issues of jurisdiction of the Arbitral Tribunal as raised by the Claimants. It is this order of the District Court which is challenged before me in the above Arbitration Appeal.

7. I must mention that while the above Appeal was pending before this Court, the Claimants, in the light of the order passed by the District Court, requested the Arbitral Tribunal to frame issues with reference to the statement of claim as well as the counterclaim. The learned Counsel appearing on behalf of the Respondent before the Arbitral Tribunal [the Appellant herein] fairly pointed out that there was no objection raised by client to this course of action being adopted, and hence, the Arbitral Tribunal, on 16.12.2022, framed issues/points for determination. The learned Counsel brought these issues to my attention which clearly indicate that issues arising out of the statement of claim are also framed by the Arbitral Tribunal for its consideration. The learned Counsel therefore submitted that since the issues arising out of the statement of claim are already framed by the Arbitral Tribunal and the Claimants are also directed to file their affidavit of evidence by 16.01.2023, the Appellant herein [the Respondent before the Arbitral Tribunal] is not seriously pressing this Appeal.

8. The learned Counsel appearing on behalf of the Claimants before the Arbitral Tribunal [the Respondents herein] submitted that since under Section 34 of the Arbitration Act, the Court has no power to remand the matter back to the Arbitral Tribunal stated, on instructions, that the Claimants have no objection if the statement of claim is considered as restored before the Arbitral Tribunal so that the Arbitral Tribunal can take the Arbitration proceedings further and adjudicate the statement of claim [filed by the Claimants] as well as the counterclaim filed by the Respondent and pass the Award. The learned Counsel on behalf of the Claimants has also tendered a Pursis evidencing the aforesaid statement of the Claimants [the Respondents herein] and which is taken on record and marked 'X' for identification.

9. Considering the consensus of the parties, the above Arbitration Appeal is disposed of with a clarification that the Arbitral Tribunal shall treat the statement of claim filed by the Claimants as restored and shall pass the final Award on the statement of claim as well as the counterclaim on the basis of the issues already framed by it on 16.12.2022.

10. I am informed that the Arbitral Tribunal has directed the Claimants to file their affidavit of evidence by 16.01.2023 which

has not been done. The Respondent [the Appellant herein] was also directed to file its affidavit of evidence on or before the said date [16.01.2023] which has been complied with by the Respondent. The learned Counsel appearing on behalf of the Claimants, on instructions, has stated before the Court that notwithstanding what is stated in the Pursis, the Claimants shall file their affidavit of evidence before the Arbitral Tribunal on or before 06.02.2023. The said statement is accepted as an undertaking given to the Court.

**11.** It is made clear that if the affidavit of evidence is not filed by the Claimants by the said date, the Arbitral Tribunal may, in its discretion, either decide to extend the time or treat the evidence of the Claimants as closed.

**12.** I am also informed by the parties that the time to complete the Arbitration proceedings is upto 30.09.2023. The parties are therefore directed to ensure completion of the Arbitration proceedings by the said date. If for any reason the Arbitration proceedings are not completed by 30.09.2023, either party can approach the Court for an extension of the mandate of the Arbitral Tribunal, which shall not be opposed by the other party.

**13.** The above Arbitration Appeal is disposed of in the aforesaid terms. No order as to costs.

**14.** This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**B.P. COLABAWALLA, J.**

VAIGANKAR  
ESHA SAINATH

Digitally signed by VAIGANKAR  
ESHA SAINATH  
Date: 2023.01.25 10:33:21 +05'30'