

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

WRIT PETITION NO.6935 OF 2019

Tejraj Realtors LLP
formerly known as
M/s. Tejraj Realtors, a registered
partnership firm, which is now
converted and incorporated as
having its office at 301, Bonita
Vasant Rao Deshmukh Path, Ghole
Road, Shivajinagar, Pune 411 005
through its partner,
Mr. Tejraj Ganpatrao Patil

...Petitioner

Versus

1. Shankar Laxman Kalamkar
2. Mrs. Chandrabhaga Shankar
Kalamkar
3) Tukaram Shankar Kalamkar
4) Sanjay Shankar Kalamkar
5) Balasaheb Shankar Kalamkar

...Respondents

...

Mr. Chaitanya B. Nikte with Mr. Mayur Khandeparkar, Prajit S. Sahane
for the Petitioner.

Mr. Vaibhav More for Respondent Nos.1 to 5.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

ORDER PRONOUNCED ON: 02nd NOVEMBER, 2023.

ORAL ORDER :-

1. The Petitioner has impugned order dated 14/02/2019
passed by the learned Joint Civil Judge, Senior Division, Pune, in
Special Civil Suit No.1576 of 2018. By the impugned order the

learned Judge allowed the application at Exhibit-8 of the Arbitration and Conciliation Act, 1996 filed by the Respondents and thereby referred the parties to arbitration.

2. The dispute between the parties relates to the Development Agreement and Power of Attorney dated 27/09/2012, whereunder the Respondent put the Petitioner in possession of the suit property for the purpose of development. The Petitioner demolished the existing structures and commenced development process after obtaining sanctioned development plan. On the basis of the Power of Attorney the Petitioner executed a sale deed dated 01/09/2015 and transferred the property in its favour. The dispute arose with the Respondent terminating the Development Agreement vide notice dated 01/09/2015. This led to the Petitioner filing a suit for damages with a grievance that the Respondents were forcibly entering the suit property and obstructing the development activity.

3. By order dated 27/11/2018, the learned Judge granted ad-interim relief and restrained the Respondent Nos.1 to 3 from carrying out any construction or changing the nature of the suit property till the next date.

4. The Respondents put in their appearance and filed application under Section 8 of the Arbitration Act. By the impugned order dated 14/02/2019 the learned Judge allowed the said application and referred the parties to arbitration. The Petitioner initially challenged the said order in an appeal filed before the District Court but having been advised that the appeal is not maintainable, the Respondents have invoked writ jurisdiction of this Court challenging legality of the impugned order.

5. It is not in dispute that the Development Agreement contains an arbitration clause and hence reference cannot be said to be illegal. It is however brought to my notice that the Respondent has now filed a suit being Special Civil Suit No.1159 of 2019 against the Petitioner for cancellation of the sale deed executed by the Petitioner on the basis of the Development Agreement and Power of Attorney executed in its favour. Both the suits relate to the same subject matter and have their genesis in Development Agreement and the Power of Attorney executed by the Respondent in favour of the Petitioner. In such circumstances, adjudication of the disputes by two different authorities can lead to conflicting findings. In this fact situation, it is

appropriate that both the suits viz. Special Civil Suit No.1159 of 2019 and Special Civil Suit No.1576 of 2018, both filed before learned Civil Judge, Senior Division, Pune are tagged together and are heard and disposed of together.

6. Hence, the impugned order is set aside. Special Civil Suit No.1576 of 2018 is restored to the file. Both the Suits viz. Special Civil Suit No.1576 of 2018 and Special Civil Suit No.1159 of 2019 are ordered to be tagged together. The said suits be heard and disposed of as expeditiously as possible. Ad-interim relief granted in favour of the Petitioner shall remain in force for a period of two weeks from the date on which the order is uploaded, with liberty to the Petitioner to move the Trial Court.

7. The Writ Petition stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)