

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7450 OF 2023

Mr. Waheed Gesawat and ors Petitioners

Vs.

Rashmi Harsh 'G' Co-operative Housing
Society Ltd. and ors. Respondents

Mr Anil D'souza for the Petitioners.

Mr. Atul Damle, Senior Advocate a/w Mr. Uttam Shukla for the
Respondent No.1.

Mr. Amogh Singh i/b. Jeet Gandhi for the Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th JUNE 2023.

P. C.

1. The petitioners are aggrieved by the order dated 24 March 2023 referring the dispute to arbitration under the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act").

2. Heard Mr Anil D'souza, learned counsel for the petitioners, Mr. Atul Damle, learned Senior Advocate for respondent no.1 and Mr. Amogh Singh, learned counsel for respondent no.2. For the sake of convenience, the parties are referred by their statues before the trial court.

3. The plaintiffs who are the members of defendant no.1-Society instituted Regular Civil Suit No.385 of 2022 for a declaration that the Development Agreement dated 22 November 2021 executed between defendant no. 1-Society and defendant

no.2- developer for redevelopment of the Suit premises is bad in law and illegal. In these proceedings, an application came to be filed by defendant no.2-developer under Section 8 of the Arbitration and Conciliation Act, 1996 praying that the parties be referred to arbitration in view of the arbitration clause contained in the development agreement dated 22 November 2021, which came to be allowed giving rise to the present Petition.

4. Mr. D'souza, learned counsel for the petitioners submits that the plaintiffs not being signatories to the development agreement are not bound by the arbitration clause. Drawing support from the averments made in the application filed by defendant no.2-developer wherein it is averred that the plaintiffs after approving and signing the draft agreement refused to execute and register the development agreement, he would contend that the defendant no.2-developer has based his claim on the draft development agreement which was signed by the parties as also the consent letters issued initially. He has further invited attention of this Court to the provisions of the Arbitration & Conciliation Act, 1996 and would contend that there is no arbitration agreement between the parties.

5. Mr.Damle, learned senior advocate appearing for the defendant no.1-Society submits that the issue is no longer *res integra* and is covered by the decision of this Court in the case of *Chirag Infra Projects Pvt. Ltd. vs. Vijay Jwala Coop. Jsg. Soc. Ltd and anr.*¹. He points out that the redevelopment agreement is a registered development agreement executed by defendant no.1-

1 2021 SCC OnLine Bom 364 : (2021) 3 Bom CR 271

Society and defendant no.2-developer and out of 45 members, the plaintiffs who are two in number are opposing the development agreement. He further submits that IOD is already obtained.

6. Mr. Dsouza would distinguish the decision of this Court in the case of *Chirag Infra Projects Pvt. Ltd.* (supra) and would contend that the said decision was rendered in an Arbitration Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996. He would further submit that it is settled by the decision of this Court in the case of *Girish Mulchand mehta v. Mahesh S. Mehta*² that the application for the relief under section 9 can be sought even against the third party.

7. Mr.Singh, learned advocate appearing for respondent no.2 submits that the development agreement was duly executed and the necessary stamp duty in that respect was already paid. This was in response to the submission of Mr. D'souza that there is nothing on record to demonstrate that the stamp duty was paid. It is required to be noted that no such submission is raised in this petition or even before the trial Court.

8. Considered the submission of parties.

9. By the development agreement dated 22 November 2021, defendant no.1-Society entered into an agreement for redevelopment of the society with defendant no.2-developer. The development agreement which is annexed at page 34 of the Petition indicates that the same has been signed by the Society through its Chairman and the Secretary. Apart from that, the agreement is signed by the some of the members of the Society.

² Appeal No.338 of 2009 in Arbitration Petition (L) No.493 of 2009 Bombay High Court passed on 10.12.2009.

Although it is the contention of the learned counsel for the petitioners that the development agreement has not been signed by the plaintiffs, he is unable to demonstrate that there is requirement in law that the development agreement is required to be signed by all members of the Society to be bound by the same, when the execution of the development agreement between Society and the developer is not a disputed position. It is also not disputed that development agreement has been signed pursuant to the general body meeting of the society wherein the members of the society had agreed for the redevelopment of the Society and the redevelopment rights has been granted to defendant no.2-developer. The plaintiffs who are two of the members of the Society have not filed any dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 challenging the resolution which has been passed by defendant no.1-Society and as such the resolution binds the Plaintiffs.

10. The issue that requires determination is whether the petitioners who are the members of the Society are bound by the arbitration clause contained in the development agreement or not. Clause 50 of the development agreement containing the arbitration clause reads thus;

“50. Any dispute between the parties hereto arising out of or in connection with this Agreement shall in principle be settled by the parties amicably by mutual consultation and if any such dispute cannot be resolved, then in any such event the dispute shall be finally settled by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modification or replacement thereof, Arbitration

will be held in Mumbai and decision therein shall be final and binding on the parties. All the arbitration proceedings will be in English language and shall be conducted by sole Arbitrator to be mutually appointed by the Developer and the Member / society.”

11. The application in question has been filed under section 8 of the Arbitration & Conciliation Act, 1996 which mandates that the judicial authority before which an action is brought in a matter which is the subject matter of an arbitration agreement or any person claiming through him to refer the parties to arbitration if it finds that there is *prima facie* a valid arbitration agreement. The development agreement between defendant no.1-Society and defendant no.2-developer is not disputed. What is disputed by Mr.D'souza is that the plaintiffs who are the members of the Society are not the signatories to the development agreement. In the year 1985, the Apex Court in the case of *Daman Singh & Ors. vs. State of Punjab and ors.*³ has taken a view that once a person becomes a member of a co-operative society he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must speak through the society or rather, the society alone can act and speak for him qua the rights or duties of the society as a body. This position in law has remained unchanged.

12. This Court in the case of *Chirag Infra Projects Pvt. Ltd.* (supra), was considering a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking direction to the dissenting

3 1985 AIR 973

member to handover his flat for purpose of re-development. The defence was that the member had not signed the development agreement. This Court, after considering the entire law on the subject which had taken a consistent view that the society is the owner of the suit property and once the person becomes member of the society, he is bound by the decision of the general body of the society, allowed the Petition. Mr. D'souza attempted to distinguish the decision on the ground that the same is rendered in the context of an application filed under Section 9 of the Arbitration and Conciliation Act, 1996. In another decision of this Court in the case of Girrish Mulchand Mehta Vs Mukesh S. Mehta reported in 2019 SCC Online Bom, 1986, this Court has held that in view of binding effect of the resolutions on the appellants, it would necessarily follow that the appellant were claiming under the society. As a corollary the development agreement executed by the Society is binding upon the member.

13. By the Suit in question, the plaintiffs seek to challenge the development agreement on the ground that the same has been executed without following the due process of law. It is not the case in the suit that not being the signatories to the development agreement, the petitioners are not bound by the terms of the agreement. Considering the decision referred to above, I do not find any merit in the submission of Mr. D'souza that not being signatories to the development agreement, the petitioners are not bound by the terms of the development agreement containing the arbitration clause.

14. In light of the above no cause for interference is made out.
Writ Petition stands dismissed.

SHARMILA U. DESHMUKH, J.