

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9452 OF 2024

Aarti Co-operative Housing Society Ltd. .. Petitioner

Versus

M/s. Siddharth Constructions .. Respondent

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- Mr. Vikas Somawanshi i./by Mr. Vaibhav V. Ugle, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 12, 2024

P.C.:

1. Heard Mr. Somawanshi, learned Advocate for Petitioner.

None appears for the Respondent despite being listed and called out.

2. The present Writ Petition takes exception to the order dated 08.02.2024 passed below Exhibit-18 in Special Civil Suit No.1553 of 2019 by the learned Trial Court.

3. Plaintiff has filed the present suit for seeking declaration, injunction and cancellation of documents executed between the parties. According to Plaintiff, the Defendant was appointed by Plaintiff for redevelopment of the suit property but for last eight – nine years there was delay in taking steps for redevelopment resultantly compelling the Plaintiff to approach the learned Trial Court by way of filing the suit proceedings.

4. Plaintiff relied upon specific documents in support of

Plaintiff's case. These documents were the tender Agreement under which the Defendant was appointed for undertaking redevelopment of the Plaintiff's property, the development Agreement executed between Plaintiff and Defendant as also other incidental and ancillary documents between the parties. What is at central of the aforesaid documents is the arbitration clause. Such arbitration clause exists not only in the tender document but also in the redevelopment Agreement executed between the parties and in that view of the matter, the Defendant being aggrieved approached the Trial Court.

5. Defendant filed Application below Exhibit-18 and contended that in view of the specific objection raised by Defendant in the written statement, *inter alia*, relating to the arbitration clause appearing in the tender document as also in the redevelopment Agreement, the dispute between the parties ought to be relegated to arbitration as agreed upon by the parties.

6. Though the Plaintiff took the objection that suit was based on the redevelopment Agreement dated 05.02.2011 and not as per the tender Agreement executed between parties dated 09.10.2010, there was an ambiguity in respect of resolution of dispute either through the Court or through the Arbitrator.

7. Mr. Somawanshi is attempting to exploit this contention raised by the Plaintiff and would argue that the parties have

specifically in the redevelopment Agreement dated 05.02.2011 in paragraph No.50 of the said Agreement have agreed upon any dispute between the parties amenable to Courts of Pune jurisdiction and in view of disagreement between the parties, the same ought to be prevailed.

8. Learned Trial Court after hearing both the parties and considering the documents and more specifically the development Agreement and Power of Attorney executed between the parties opined that as per the terms agreed between the parties in the redevelopment Agreement dated 05.02.2011 as also the Power of Attorney, both of which were registered documents i.e. under term No.3 as per the terms, conditions and specification mentioned in the tender and redevelopment Agreement dated 05.02.2011 as appearing in clause No.9 on page No.4 of the said Agreement, the parties had resolved to go to the Arbitration in event of any dispute having been arisen during the Agreement period.

9. Once such a valid arbitration clause was agreed upon by parties then the provision of Section 8(1) of the Arbitration and Conciliation Act, 1966 deal with the power of the judicial authority to refer such a matter and the parties to arbitration which has been exercised by the learned Trial Court.

10. I do not find any cause to interfere with the cogent findings returned in paragraph No.11 of the order dated 08.02.2024 as the said

findings are clearly based upon the agreement between the parties which is referred to therein.

11. In that view of the matter, the order dated 08.02.2024 deserves to be sustained as having been correctly passed. Resultantly, the Writ Petition fails.

12. In view of the above, Writ Petition is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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