

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L) NO. 1573 of 2024
IN
ARBITRATION PETITION NO. 207 of 2024

Hare Krishna Builders

...Petitioner

Vs.

Deeplaxmi Co Operative Housing Society Ltd. & Ors.

...Respondents

WITH
INTERIM APPLICATION (L) NO. 1595 OF 2024
WITH
ARBITRATION PETITION NO. 207 of 2024
WITH
ARBITRATION PETITION NO. 211 OF 2024
WITH
ARBITRATION PETITION NO. 210 OF 2024
WITH
ARBITRATION PETITION NO. 209 OF 2024
WITH
INTERIM APPLICATION (L) NO. 30242 OF 2023

Mr. Karl Tamboly a/w Dhvani Mehta Desai, Aadil Parsurampuriah and Sunain Masand for the Petitioner.

Mr. Atul Rajadhyaksha, Senior Advocate a/w Nishant Tripathi, Ranjana Todankar for Respondent No.1.

Mr. Ashish Kamat, Senior Advocate i/by Anita Murgude for Respondent Nos.2 to 28.

This order is corrected pursuant to speaking to the minutes order dated 7th August, 2024

Shubham

Mr. Sunil Kaam for the Applicant in IAL/30242/2023.

CORAM : ARIF S. DOCTOR, J.

DATE : 23rd JULY, 2024

P.C.-

1. After the matter was argued at some length, it was put to Learned Counsel whether their clients would be agreeable to refer their disputes and differences to arbitration.
2. Learned Counsel on taking instructions submitted that they would be ready to submit their disputes and differences to arbitration.
3. Hence, I appoint Mr. Justice G. S. Patel (Retd.) to act as Sole Arbitrator to decide the disputes and differences between the parties.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Justice G. S. Patel (Retd.), is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.
- (b) **Communication to Arbitrator of this order:**
 - (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.

- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr. Justice G. S. Patel (Retd.)

Address 11 Maker Chambers VI 220
Jamnalal Bajaj Marg, Nariman
Point, Mumbai 400021.

Mobile 9821088711

Email gautam@gautampatel.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.

- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
- (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
 - (iii) The learned Sole Arbitrator is requested to dispose of Arbitration Petition No.207 of 2024 along with Interim Application (L) No.1595 of 2024 at the earliest.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

4. I am informed that the pleadings are completed save and except an additional affidavit that the Petitioner seeks to file in response to the objections to the Commissioner's report filed by the Respondents. This maybe done within a period of one week from today before the Learned Arbitrator.

5. Given that this is a redevelopment and there is anxiety on both sides of some urgency, the Learned Arbitrator is requested to dispose of Section 17 Petition as expeditiously as possible preferably within a period of two weeks from today. Interim orders passed to continue till such date. Needless to state that the Learned Tribunal will decide the Section 17 Petition uninfluenced by the interim orders passed in this Petition.

6. The captioned Arbitration Petition No.207 of 2024 along with Interim Application (L) No.1595 of 2024 are disposed of as the same are referred to arbitration. Insofar as Interim Application (L) No.30242 of 2023 is concerned, the Applicants therein shall be at liberty to file any independent proceedings as may be available to the Applicants under law. It is made clear that this order should not be construed to mean that the Applicants in Interim Application (L) No.30242 of 2023 have in fact been granted such liberty.

7. It is made clear that reference to the arbitration shall be under development agreement dated 5th December, 2005 and Supplementary cum Rectification Deed dated 22nd January, 2019.

8. Contempt Petition (L) No.1573 of 2024 shall be heard and disposed of on its merits.

(ARIF S. DOCTOR, J.)