

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 10201 OF 2024

IN

COMMERCIAL SUIT NO. 46 OF 2024

WITH

COMMERCIAL SUIT NO. 46 OF 2024

AND

INTERIM APPLICATION (L) NO. 20217 OF 2024

(For Amendment. Not on Board)

AND

INTERIM APPLICATION (L) NO. 26368 OF 2024

(Not on Board)

COMMERCIAL ARBITRATION PETITION (L) NO. 27573 OF 2024

(Not on Board)

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Date: 2024.09.12
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Hindustan Infrastructure ...Applicant

IN THE MATTER BETWEEN

Hindustan Infrastructure ...Plaintiff

Versus

Vishwas Apartment CHS Ltd ...Defendants

Mr Gauraj Shah, with Yatin R Shah & Vipul Makwana, for the
Applicant/Plaintiff.

Mr Amit Tungare (VC), for the Defendants.

CORAM: ARIF S. DOCTOR, J
DATED: 9th September 2024

PC:-

INTERIM APPLICATION (L) NO. 20217 OF 2024.

1. The Plaintiff has filed this Interim Application for amendment to challenge a letter of termination. Learned Counsel appearing on behalf of the Defendant very fairly does not oppose the same. It is allowed. Amendment is to be carried out on or before 18th September 2024. Reverification is dispensed with.

2. The Interim Application is disposed of.

3. When the matter was called out Learned Counsel appearing on behalf of the Applicant-Plaintiff submits that there was an arbitration clause in the Development Agreement which has been terminated by the Defendants by which the Plaintiff was appointed as a developer. He thus submitted that the Suit itself ought to be referred to arbitration. Mr Shah, Learned Counsel appearing on behalf of the Plaintiff submitted that his clients are ready and willing to submit their disputes and differences to arbitration in terms of the present Suit. He submitted that this Court would appoint an arbitrator.

4. Hence, I appoint Mr. Rashmin Khandekar, Advocate, to act as a sole arbitrator to decide the disputes and differences in the present Suit on the following terms and conditions.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Rashmin Khandekar, Advocate, 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 Plaintiff within one week from the date this order is uploaded.

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

Arbitrator **Mr Rashmin Khandekar,**
Advocate.

Address 2nd Floor, Wadia Building, Dalal
Street, Opp.BSE, above Blue Jokai
Cafe, Fort,
Mumbai 400 001

Mobile 9619692184

Email rashmin.khandekar@gmail.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 Plaintiff 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) Interim Application/s:**

 - (i)** The Interim Applications filed by both sides in the Suit shall be treated as 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 learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (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.

5. All rights and contentions of the parties are expressly kept open. Except that the Defendants shall not now contend before the Tribunal that the subject matter of the Suit is not arbitrable on behalf of the Development Agreement. Learned Counsel appearing on behalf of the Defendant fairly submits that the Defendant shall give the Plaintiff one week's notice in the event the Defendant society is desirous of taking any steps in appointing of a fresh developer.

6. The Suit is disposed of in these terms. Pending Interim Application, if any, shall stand disposed of accordingly.

7. It is made clear that the Defendant shall now permitted to file Statement of Defence once the amended copy of the Plaint/Statement of Claims is served upon the Defendant.

8. In view of the fact that the Suit has been disposed of, refund of the Court fees, if any, in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

(ARIF S. DOCTOR, J)