

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 250 OF 2024

Pallavi Sadan Cooperative Housing Society Limited ...Petitioner

Versus

Shanti Enterprise ...Respondent

Mr Shanay Shah, with Tushar Gujjar & Deepak Singh, i/b SL Partners,
for the Petitioner.

Mr Sachin A Mhatre, i/b Mhatre Law Associates, for the Respondent.

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CORAM. ARIF S. DOCTOR, J
DATED: 3rd September 2024

PC:-

1. After the Petition, which is filed under Section 9 of the Arbitration and Conciliation act 1996, was heard at some length, Learned Counsel for the parties have submitted that they were agreeable to the appointment of an Arbitrator in terms of the disputes and differences that have arisen between the parties from a Development Agreement dated 23rd December 2014 and its consequential termination.

2. Mr Shah, Learned Counsel appearing on behalf of the Petitioner, however, submitted that while his client is going to arbitration, prays for certain interim relief in terms of prayer clause (a), which reads as follows:

“(a) To restrain the Respondent, it’s Directors/ Partner/ Servants /Agents or all/or any persons claiming through and under by way of an order of permanent injunction from interfering, intermeddling in the in the redevelopment of the Petitioner Society and its process of appointing/ construction/completion of the project by the Petitioner and/or its agents and assigns of the project.”

3. Learned Counsel in support of interim relief pointed out that under the Development Agreement, which was entered into by the parties in the year 2014, the redevelopment was co complete within 28 months along with six months grace period. He submitted that not a single brick had been moved and the building is as exactly as it was stood in 2014. He then pointed out that in the interregnum the developer had tendered a revised proposal which itself reflected that the developer was not in a position to act in terms of the Development Agreement but most importantly he pointed out that the Development Agreement had been terminated on 25th August 2022, which termination has remained unchallenged till date. He also submits that basis this, there could be no impediment to the Respondent proceed with redeveloping the said property and it is thus he pressed for prayer clause (a) reproduced above.

4. Therefore, there will be an interim order in terms of prayer clause (a), reproduced above.

5. Learned Counsel appearing on behalf of the Respondent does not dispute the termination today was remained unchallenged. He further submits that the Respondent has counter-claims against the Petitioner which counter-claims shall be made in arbitration. He also seeks leave to file Application under Section 17 of the Arbitration Act against the Petitioner. I see no difficulty in permitting this. Hence, I appoint Mr Gaurav Metha, Advocate to decide the disputes and differences between the parties on the following Terms and Conditions:

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Gaurav Metha, 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 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 **Mr Gaurav Mehta, Advocate.**

Address 101, Hamam House, 1st Floor,
Hamam Street, Next to Post
Office,

Mumbai 400 023

Mobile 9820193592

Email gcm@gauravmehta.in

- (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) **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 all interim applications at the earliest.

(g) **Fees:** Since the appointment of the Arbitrator is by consent of the parties, the arbitral tribunal's fees shall not 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.

6. It is made clear that all rights and conditions of both sides are expressly kept open.

7. The Petitioner is also at liberty to take out an Application under Section 17 before the Arbitral Tribunal.

8. The Petition is disposed of in the aforesaid terms. No costs.

(ARIF S. DOCTOR, J)