

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.28 OF 2024

Shri. Sanjay Bhagwan Patil
Sole Proprietor of M/s Vikrant DevelopersPetitioner
Versus
Rashida Sadiqbhai Kalyanwalla & Ors. ...Respondents

Mr. Ram Apte, Senior Advocate a/w. *Sumedh Modak & Harshal Nahata, Advocates for Petitioner.*

Mr. Kailas Dewal i/b. *Mr. Yash Dewal & Mr. Sham Thakur,*
Advocates for Respondent Nos.1, 3, 5 & 7.

Mr. Aneesh Deshpande, Advocate for Respondent Nos.2 and 4.

Mr. Atul Damle, Senior Advocate a/w. Ms Druti Datar, Advocate for Respondent No.9.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JULY 09, 2025

ORAL JUDGMENT :

1. This is a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) in connection with a Development Agreement dated September 24, 2007 (*“Agreement”*). The arbitration agreement is contained in Clause No.15 (Found at Page No.34 of the Petition) of the Agreement. The parties intended to have a named arbitrator but have left the name blank in the clause. Consequently, the Petitioner requests this Court to appoint an arbitrator.

2. The Development Agreement in question came to be terminated on October 15, 2020. Aggrieved by the same, the invocation notice was issued by the Petitioner on November 10, 2023.

3. Shortly thereafter, the counterparties of the Petitioner who were signatories to the Development Agreement effected a conveyance of the very same property in favour of one M/s Say-Sai Infra. The Petitioner has taken out an Interim Application (Stamp) No.34192 of 2024 to implead the said transferee of the same property as proposed Respondent No.9. While the agreement for sale with Respondent No. 9 was executed on December 28, 2023, the sale deed effecting conveyance of the property in favour of the proposed Respondent No.9 was executed on January 19, 2024. Both these actions are after the issuance of the notice invoking arbitration.

4. Learned Senior Counsel on behalf of the Petitioner would submit that it is clear in the Act that the date of commencement of arbitral proceedings is the date of the invocation notice issued under Section 21 of the Act. Consequently, once the invocation notice had been issued, the arbitral proceedings had commenced, rendering any party who acquires the same property with eyes open to have come in consciously, knowing that proceedings are pending. Towards this end, Learned Senior Counsel would contend that a *prima facie* case has been made

out since the proposed Respondent No.9 has made a conscious choice to purchase the property knowing that the arbitration proceedings are pending. He would also point to recitals in the agreement for sale to point to full knowledge of the pre-existing development agreement, and also the termination of such Development Agreement. Consequently, he would submit that the Interim Application be allowed to join Respondent No.9 as a party and refer the disputes and differences between the parties to an arbitral tribunal.

5. Learned Senior Counsel also points out that pursuant to the Development Agreement and well after the termination (October 15, 2020), the Petitioner had entered into agreements dated August 9, 2022 with tenants occupying the property and Respondent Nos.2 and 4 are themselves witnesses to that agreement. Consequently, his submission would be that having signed as witnesses to the agreement with the tenants, the termination is deemed to have been retracted at least by a couple of the Respondents. Learned Counsel for Respondent Nos.2 and 4 would contend that the Development Agreement was indeed terminated and execution of signatures as a witness is a contested fact. Evidently, this question of fact falls in the domain of the Arbitral Tribunal for appropriate consideration of facts after examining evidence.

6. The short question that arises for consideration is whether the Respondents are party to the Arbitration Agreement and whether a formally executed arbitration agreement is in existence. A comparison of the array of Respondents with the signatories to the Arbitration Agreement would show that Respondent Nos.4 to 8 are in fact personally signatories to the Arbitration Agreement. During the course of these proceedings, Respondent Nos.6 and 8 have expired. Likewise, the first two signatories to the arbitration agreement have expired and Respondent Nos.1 to 3 are said to be the legal heirs of the said two signatories. Consequently, taking into account the law on the effect of demise of a party to the arbitration agreement, a formally executed Arbitration Agreement is indeed in existence. Therefore, the disputes and differences between the Petitioner and Respondent Nos.1 to 8 ought to be referred to arbitration in disposal of this Petition.

7. The next question that emerges is the status of Respondent No.9. The contention of Learned Senior Counsel for the Petitioner is that Respondent No.9 came with eyes open and in fact has recited in the conveyance documents that the Development Agreement executed by the vendors with the Petitioner who had been in existence and was terminated. Whether the Conveyance Deed would therefore be hit by *lis pendens* is a mixed question of fact and law for which evidence would have to be led before the Arbitral Tribunal. Consequently, taking

into account the latest position of law declared by the Supreme Court on the power of Arbitral Tribunal to implead necessary parties into the proceedings, as set out in *ASF Buildtech*¹ and *Adavya*², it would be appropriate to leave the issue of whether Respondent No.9 has a case to make for not being made a party, for consideration by the Learned Arbitral Tribunal. On the face of it, going purely by the dates involved, a case has been made out for referring the parties to arbitration. To join Respondent No. 9, the Respondent may file an application with the Learned Arbitral Tribunal, which in view of the law now declared is best addressed by the Arbitral Tribunal appointed hereby. It is for the Learned Arbitral Tribunal to examine the facts and the evidence and return a finding on the necessity or the absence of necessity for Respondent No.9 being made a party to the arbitral proceedings, and whether at all any reliefs can now be claimed against Respondent No.9.

8. Needless to say, to deal with such issues, Respondent No.9 would need to participate before the Learned Arbitral Tribunal in the course of the Arbitral Tribunal determining the aforesaid question. Consequently, the Petition is ***finally disposed*** of referring the parties to this Petition, to arbitration for resolution of their disputes, in the following terms :-

¹ *ASF Buildtech Private Limited vs. Shapoorji Pallonji and Company Private Limited* – 2025 SCC Online SC 1016

² *Adavya Projects Pvt. Ltd. vs. Vishal Structurals Pvt. Ltd. & Ors.* – 2025 SCC Online 806

A] Justice (Retd.) Sadhana Jadhav, a former judge of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact details of the Learned Arbitrator are set out below:-

Address : 153, 15th Floor, Jolly Maker 3,
Next to D M Somani School,
Cutte Parade, Mumbai.

Email Id : : sjadhavo660@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the

respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

9. It is made clear that an application justifying the need to add Respondent No.9 as a necessary party to the proceedings will also be placed before the Learned Arbitral Tribunal for consideration. The Learned Arbitral Tribunal would examine the sequence of events and arrive at a view on the necessity of Respondent No.9 in the light of the reliefs that may be fashioned by the Petitioner before the Learned Arbitral Tribunal. With the aforesaid directions, this Petition is *finally disposed of*.

10. Interim Application No.8704 of 2025 is to bring on record legal heirs of the original Respondent No.8 who has expired in the course of these proceedings. Since they are legal heirs, the Petitioner shall make such legal heirs a party to the arbitration proceedings. Since there are others too who have expired in the course of these proceedings, liberty is granted to the Petitioner to bring on record the legal heirs in front of the Learned Arbitral Tribunal.

11. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

12. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]