IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.146 OF 2024
WITH
INTERIM APPLICATION NO.11797 OF 2024
IN
ARBITRATION PETITION NO.146 OF 2024

M/s Sky One Corporate Park LLP & Ors. ....Petitioners

Versus

Shobha Rasiklal Dhariwal & Anr. ....Respondents

Ms. Gulnar Mistry (through VC) *a/w. Mr. Subit Chakrabarti, Ms Khushnumah Banerjee & Ms Aashka Vora i/b. Vidhii Partners, Advocates for Petitioners.*

Mr. Vishwajeet Sawant, Senior Advocate *a/w. Mr. Aniket Nikam & Ms. Shraddha Khandhadia i/b. Mr. Ashish Pawar, Advocates for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 16, 2025

ORAL JUDGMENT :

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) challenging an Order dated April 5, 2024 (***"Impugned Order"***) passed by the 8th Jt. Civil Judge Senior Division, Pune in Spl. Dkst. (Execution Application) No.19 of 2023 (***"Execution Application"***).

2. Petitioner No.1, M/s Sky One Corporate Park LLP (***"Sky One"***), Petitioner No.2, Amit Kantilal Lunkad and Petitioner No.3, Amol Kantilal Lunkad (collectively, "***Lunkads***") had settled certain disputes with Respondent No.1, Shobha Rasiklal Dhariwal and Respondent No.2, Janhavi Rasiklal Dhariwal (***"Dhariwals"***). These disputes were subject matter of Special Civil Suit No.1084 of 2021 instituted by the Dhariwals. While the suit was settled with the parties executing Consent Terms on December 22, 2021 (***"Consent Terms"***), which were confirmed by a consent order in the said proceedings on December 30, 2021.

3. The Consent Terms entail a specific set of activities to be carried out by the parties. The claim against Sky One and the Lunkads was a collective sum of Rs.60 Crores and the Consent Terms provided that Sky One would deliver 5 Lakh sq.ft. of constructed area within a period of four years to the Dhariwals. Such area had not been divided and earmarked, but was meant to be demarcated by March 31, 2023. The sum of Rs.60 Crores covered by the Consent Terms entailed an obligation of Rs.20 Crores being discharged by Sky One to the Dhariwals and a further sum of Rs.40 Crores being payable in connection with a firm called M/s Lunkad Realty which had to pay the said sum to M/s Manikchand Sky One, a firm in which the Dhariwals

too were partners. This composite obligation of Rs.60 Crores was settled by way of the Consent Terms.

4. It was also noticed in the Consent Terms that Sky One had taken a loan of Rs. 525 crores from L&T Finance Limited, for which Catalyst Trusteeship Limited (***"Catalyst"***) was a trustee. A further sum of Rs. 66 crores had also been borrowed and these too were secured, Catalyst being the security trustee. These borrowings had been secured by two deeds of mortgage dated December 31, 2018 and July 19, 2021.

5. It was anticipated that Catalyst, the Security Trustee would be paid by December 31, 2023. As per Clause 4, the Consent Terms were subject to repayment of the loan amount to Catalyst, therefore, the obligation to deliver 5 Lakh sq.ft. of constructed area to the Dhariwals was subject to Catalyst being paid by Sky One.

6. Clause 9 of the Consent Terms contains an *"additional"* obligation that Sky One would pay a sum of Rs.24 Crores to the Dhariwals within one year from the date of execution of the Consent Terms. The Consent Terms had other provisions such as the need for any third party to whom the project may be sold to continue honouring the obligations under the Consent Terms, as also pledging of shares of a company called Kasara Golf Course and Resorts Pvt. Ltd., which would be released *pro rata* to the extent of the 5 Lakh sq.ft. of constructed area

being handed over and delivered to the Dhariwals under the Consent Terms. Induction of any partner in Sky One would also have to ensure that the obligations under the Consent Terms would not stand diluted. Likewise, any further loans taken by Sky One would need to ensure a disclosure to the lender about the existence of the obligations under the Consent Terms. In the aforesaid premises, all proceedings and disputes amongst the parties, which were covered by the aforesaid Special Civil Suit, stood settled and withdrawn.

7. The Consent Terms were blessed by the Court and the Suit was disposed of by an order dated December 30, 2021, thereby converting the Consent Terms into a Consent Decree.

8. The facet that is most important for this Petition is the fact that Clause 19 of the Consent Terms contains an arbitration clause. It would be necessary to extract the same :-

> *"In case of* ***any dispute/ ambiguity/ misunderstanding/difference of opinion arising out of these Consent Terms/agreement, the same shall be referred for mediation/conciliation*** *to Mr. Atul Ishwardas Chordia and Mr. Lakhichand Bansilal Khinvasara.* ***In the event such mediation/ conciliation fails, the matter shall be referred for arbitration and the said persons shall act as arbitrators and shall follow the provisions of the Arbitration & Conciliation Act, 1996****, to resolve such dispute / ambiguity / misunderstanding / difference of opinion.* ***The seat and venue of such arbitration shall be Pune. The third arbitrator shall be***

> ***appointed by mutual consent of the above two arbitrators***. *The costs for venue and arbitral tribunal shall be borne by parties equally. The advocate fees and other respective expenses such as court fees, clerical expenses etc. shall be borne by each party independently."*
>
> ***[Emphasis Supplied]***

9. The Execution Application essentially sought execution of the term in the Consent Decree requiring Sky One to pay the additional sum of Rs.24 Crores, which was payable within a year of the Consent Terms being executed. The Written Statement in the Execution Application was filed by Sky One on May 6, 2023. Thereafter, Sky One appears to have been advised to file an Application under Section 8 of the Act on December 12, 2023, claiming that disputes and differences after the execution of the Consent Terms, which is essentially a contract between the parties according to Sky One, were intended to be resolved by reference to arbitration. Therefore, the Execution Court was called upon to not entertain the execution proceedings and to instead, refer the parties to arbitration.

10. The Impugned Order, rejected the Section 8 Application on the ground of Sky One having filed such application after having filed the Written Statement in response to the execution application. The sheet anchor of the assault to the Impugned Order is Paragraph 8 in the Impugned Order, which is reproduced below:-

"The consent terms show that, in case of any dispute/ambiguity/ misunderstanding/ difference of opinion arising out of it, the same shall be referred for mediation/ conciliation and if it fails then, the matter shall be referred for arbitration. ***It shows that, there exists an arbitration agreement. The subject matter of proceeding is same as the subject matter of arbitration agreement****. However,* ***judgment debtor has filed its reply to the execution application on 06.05.2023 at Exh.22****. Judgment debtor has already filed its first statement on the substance of the dispute.* ***Once a party submits his first statement on the substance of the dispute, it can be assumed that, such a party has submitted to the jurisdiction of the judicial authority and the judicial authority thereafter, ceases to have jurisdiction to refer the dispute to arbitration****. By filing reply at Exh.22* ***judgment debtor has submitted itself to the jurisdiction of this court and waived its right to seek a reference to arbitration. The conditions laid down under Section 8 of The Arbitration and Conciliation Act, are not satisfied****. In such situation, it cannot be said that, proceeding is barred under Section 8 of The Arbitration and Conciliation Act.* ***Therefore, present execution proceeding is maintainable. The objections raised by judgment debtor are rejected and matter shall proceed further****."*

[Emphasis Supplied]

Analysis and Findings:

11. I have heard Ms. Gulnar Mistry, Learned Advocate for Sky One and Mr. Vishwajeet Sawant, Learned Senior Advocate for the Dhariwals at length and examined the record with their assistance.

12. The core ground of challenge in this Petition is that despite the Impugned Order having found an arbitration agreement to be in existence between the parties, the Impugned Order has rejected the Section 8 Application primarily on the ground that the application was filed after the reply to the execution application.

13. At the threshold, it is noteworthy that the Execution Application does not deal with execution of that component of the Consent Terms which requires delivery of 5 Lakh sq.ft. of constructed area by Sky One to Dhariwals, which is entirely dependent on Catalyst being paid. Catalyst, as a security trustee for the lender, has rights over the property in question that have been acquired prior in time to the Consent Terms. However, the Execution Application restricts itself to execution of recovery of Rs.24 Crores, which was payable by Sky One to the Dhariwals within one year of the Consent Terms.

14. Ms. Mistry would submit that evidently there are disputes and differences between the parties, and the Section 8 Court ought to have referred the matter to arbitration in view of the express provisions of Section 8 necessitating such reference, unless the Court was of a *prima facie* opinion that the arbitration agreement does not exist. In the matter at hand, Ms. Mistry would submit, the Learned Judge had indeed ruled that an arbitration agreement is in existence, and yet not referred the parties to arbitration, necessitating this appeal.

15. Ms. Mistry would seek to rely on the judgments in ***Bhowal***[1] and ***Prithvichand***[2], both of which are judgments in context of rent legislation where consent terms had been contracted, to provide that if the consent terms failed, eviction proceedings under the rent legislation may be adopted. Such consent terms were upheld by Courts in these decisions. Likewise, Ms. Mistry would contend, since the Consent Terms in the matter in hand contain an arbitration clause in Clause 19, and since Clause 8 of these Consent Terms provides that failure to pay would lead to legal remedies, the remedy in question would be arbitration.

16. I am unable to agree. In my opinion, execution proceedings do not entail adjudication of whether the obligation to pay the amount of Rs. 24 crores under Clause 9 of the Consent Terms is at all payable. Had the Consent Terms just been a matter of contract between the parties and had not been blessed by the Court converting it into an explicit Consent Decree, it could still have been argued that the settlement agreement was a commercial contract, which may be amenable to arbitration. However, but once the Court which was seized of the aforesaid Civil Suit, took note of the consent terms and translated it into an executable decree, the only recourse thereafter is execution proceedings, and such proceedings do not represent

[1] *Bibekananda Bhowal (Dead) by Lrs. vs. Satindra Mohan Deb (Dead) By Lrs – (1996) 9 SCC 292*
[2] *Prithvichand Ramchand Sablok vs. S.Y. Shinde – (1993) 3 SCC 271.*

adjudication of any dispute that would have the character of being in conflict with any arbitration agreement,

17. For Section 8 of the Act to have any role to play, there ought to be two candidates for proceedings – one, the potential arbitration proceedings, and the other, the action before a different forum that is seized of the same subject matter as the dispute amenable to arbitration. In my opinion, for the appeal contained in this Petition to be allowed, the execution proceedings would need to be treated as competing proceedings for adjudication of some issue.

18. Towards this end, Section 47 of the Code of Civil Procedure would be instructive, which reads thus:

> *"**47. Questions to be determined by the Court executing decree**—*
>
> *(1) **All questions arising between the parties to the suit in which the decree was passed**, or their representatives, and **relating to the execution, discharge or satisfaction of the decree**, **shall be determined by the Court executing the decree** and **not by a separate suit**."*
>
> ***[Emphasis Supplied]***

19. A plain reading of the same would indicate two propositions. *First*, that there can be no separate suit for questions that may arise in execution. *Second*, that the only forum to deal with any such questions is the Execution Court. The Suit stood disposed of by the Consent

Terms. There cannot be another suit for adjudicating the issues emerging from the Consent Terms. Therefore, there is no adjudicatory proceedings possible in competition with the arbitration proceedings when execution of a clear and admitted payment obligation is involved.

20. In these circumstances, it cannot be said that there is an action being taken in pursuit of a cause of action for adjudication of adjudicate disputes and differences between the parties, the subject matter of which could be regarded as the subject matter of the arbitration agreement.

21. Likewise, it is also noteworthy that the element of handing over 5 Lakh sq.ft. of constructed area, which is connected to payment to Catalyst, was envisaged to be completed by December 31, 2023. If there had been disputes about the same in the execution proceedings, it would be the Execution Court that has a jurisdiction to deal with the matter once the Consent Terms stood converted into the Consent Decree. In these circumstances, what becomes apparent is that Sky One's contention that the execution proceedings should be treated as an action in pursuit of an adjudicatory proceedings is not tenable. Unless the proceedings initiated in the non-arbitral forum constitutes the subject matter of a cause of action requiring adjudication, there is no question of such adjudication having to be referred to arbitration under Section 8 of the Act.

22. The Impugned Order presents no analysis on this facet of the matter. In fact, the Impugned Order holds that the arbitration agreement is in existence. The Impugned Order proceeds to invoke the provisions of Section 8 of the Act on the timing for a valid filing of an application seeking reference to arbitration. The Impugned Order holds that the Section 8 Application having been filed after the reply to the execution proceedings were filed, there is no scope for entertaining such application. While such reasoning would on its own be unexceptionable – Section 8(1) of the Act bears extraction:-

> ***8. Power to refer parties to arbitration where there is an arbitration agreement.***— *1(1)* ***A judicial authority, before which an action is brought*** *in a* ***matter which is the subject of an arbitration agreement shall****,* ***if a party to the arbitration agreement*** *or any person claiming through or under him,* ***so applies not later than the date of submitting his first statement on the substance of the dispute****, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court,* ***refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists****.*
>
> ***[Emphasis Supplied]***

23. The Impugned Order in its content on timing of the application cannot be faulted since Section 8(1) of the Act provides that the application has to be filed before the reply was filed. In this case, the Section 8 Application is an afterthought and filed seven months after the reply was filed. However, being an Appeal Court, it would not be

possible for this Court to ignore the fundamental element of the law governing execution proceedings – that the execution proceedings are not a separate suit for it to be an adjudicatory proceedings that competes with arbitration proceedings. Judgements cited by Ms. Mistry that the counterparty is not precluded from consenting to proceed to arbitration even after the deadline referred to in Section 8(1) of the Act would be of no assistance since there is no consent to proceed to arbitration in this case. More importantly, the question is whether, after the agreement to settle, as reduced to writing in the Consent Terms stood converted into a Consent Decree, whether at all there can be arbitration is the core issue that needs consideration. In other words, apart from the principle on timing i.e. the need for a Section 8 Application to have been filed before the first substantial statement on the merits, in my opinion, Section 8 would have no scope for operation in the case of proceedings to execute a decree.

24. If anything, the issue involved would fall within the ambit of whether or not the dispute is arbitrable in terms of the principles laid down in a line of judgments such as ***Booz Allen***[3] by which the law clearly declared by the Supreme Court is that the scope of arbitrability can have different meanings in different contexts. Proceedings that can only be handled by public forums and which not amenable to the private dispute resolution forum of arbitration would not be arbitrable.

[3] *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd.–* (2011) 5 SCC 532

By the very nature, execution proceedings, which entail bringing to bear the sovereign and coercive power of the Execution Court to enforce a decree is not something that an arbitral tribunal can do, only because execution proceedings can never be subject matter of arbitration. This is why even arbitral awards have to come to the conventional sovereign public courts for purposes of execution as if they are decrees, in terms of Section 36 of the Act.

25. That apart, it is trite that the scope of referral jurisdiction of a Court under Section 8 of the Act is wider than the scope of referral jurisdiction under Section 11 of the Act – the latter entails only examination of the existence of a validly executed formal arbitration agreement while the former entails also examining the scope of arbitrability of a dispute.

26. On the face of it, the Execution Application covers enforcement of an admitted and decreed debt of Rs 24 crores arising out of the Consent Decree, which is amenable only to execution proceedings would not be capable of being arbitrated upon afresh.

27. For the aforesaid reasons, this Petition cannot be entertained and is ***dismissed***. Considering that both parties state that there is no judgement squarely on the point, I am persuaded not to impose costs.

28. At this stage, Ms. Mistry has instructions to request for the interim arrangement obtaining until now to be further extended by a short period. Considering that the judgment in this case has turned on the premise of the Section 8 Court having no jurisdiction to begin with, in my opinion, it would not be appropriate to extend the interlocutory arrangement any further.

29. 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.]