

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 1 OF 2025

M/s. S D Bhalerao Construction Pvt. Ltd.
Through Director And Authorised Signatory
Mr. Sanjay Bhalerao ... Appellant

Versus

M/s Vartak Nagar Prakash Co-Operative
Housing Society Ltd. Thane & Ors. ... Respondents

WITH

INTERIM APPLICATION NO. 12100 OF 2025

WITH

INTERIM APPLICATION NO. 7757 OF 2025

WITH

INTERIM APPLICATION NO. 57 OF 2025

IN

ARBITRATION APPEAL NO. 1 OF 2025

Mr. Rajesh Datar, Senior Advocate a/w. Dushyant Pagare, for Appellant.

Mr. Shreepad Murty a/w. Adv. Sahil Wagh i/b Adv. Abhishek Patil, for Respondent No. 1 of proposed Respondent.

Mr. Prashant Vasudeo Malik (through VC), for Respondents.

Mr. Shyam Powale, Chairman for Respondent No. 7-Society.

Mr. Sanjay Bhalerao- Appellant present.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 30, 2025

PC :

1. Liberty to file Vakalatnama on behalf of the Respondents and the proposed Respondents.

2. After the matter was argued for some time, Learned Counsel representing the Society and the Developer submits that they would be willing to proceed before an arbitrator to pursue remedies under Section 17 of the Act.

3. The same advocate represents both the new Developer as well as the Society and it is stated that the Society has given a power of attorney to the Developer, and therefore, it is for the Developer to issue instructions to oppose the arbitrator appointed earlier, who is said to be an unilaterally appointed arbitrator.

4. Mr. Datar, Learned Senior Advocate on behalf of the Appellant has no objection if this Court wants to appoint an independent arbitrator. Mr. S.D. Bhalerao submits that there is no quarrel with proceeding to arbitration.

5. In these circumstances, the arbitral tribunal is constituted in the following terms :

A] Mr. Sadashiv S. Deshmukh, an advocate 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;

Office Address:- 403, Jupiter, Gawand Baugh,
Building no 9, Pokharan Road no. - 2, Upvan,
Thane (West) – 400610.

E-mail: ssadashiv07@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Appellant within a period of one week from the date on which this order is uploaded on the website of this Court. The Appellant 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;

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 Arbitral Tribunal in relation to costs.

6. 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.

7. In these circumstances, the Appeal is *disposed of* allowing all contentions in the Section 9 Petition to be dealt as an application under Section 17 of the Arbitration and Conciliation Act, 1996 by the arbitrator. It is up to the Appellant to demonstrate to the arbitral tribunal that the new Developer is a veritable party and for him to also be roped into the arbitration proceedings. In any case, the contention on behalf of Learned Advocate representing both the Society and the Developer is that their interests are alive and the Society has given a

power of attorney to the Developer to take decisions in connection with the redevelopment which has remained unimplemented for over a decade.

8. In view of disposal of the Appeal, attendant interim applications also stand *disposed of*.

9. 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.]