

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11305 OF 2025**

M/s Creative Homes

..Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr. Piyush Raheja, with Aakash Loya, Abhishek Adke, Sagar Vichare
& Deepali Joshi, for the Petitioner.

Ms. Sulbha Chipade, AGP, for Respondent Nos. 1 and 2/State.

Mr. Mayur Khandeparkar, with Nishant Tripathi and Pranav Vaidya,
i/b N. Tripathi & Co, for Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED : 26th AUGUST 2025

ORDER:

1. The Petitioner assails the legality, propriety and correctness of an order dated 25th July 2025 passed by the sole Arbitrator in the arbitral proceeding between the Petitioner and Respondent No.3, thereby directing the Claimant to affix additional stamp duty of Rs.400/- and penalty of Rs.1600/- on the Agreement dated 14th August 2015 and thereupon accepting the said instruments in evidence overruling the objection raised by the Petitioner that the instruments have not been sufficiently stamped.

2. The Petitioner, a registered partnership firm, and the Respondent No.3 had entered into an Agreement dated 19th February 2007 to construct the buildings on the land bearing Plot No. 42 situated at Sector 15, CBD Belapur, Navi Mumbai. The Petitioner was designated as the contractor. It was *inter alia* agreed that upon completion of the project and grant of the occupation certificate by the Planning Authority, the Respondent No.3-owner would allot to the Petitioner-Contractor 26% of the total constructed area of approximately 91,000 sq ft in the said project. It was further agreed that, in lieu of the Petitioner obtaining the development permission, commencement certificate and occupation certificate, the owner shall allot 6% of total constructed area in addition to the said 26% constructed area. The contract further provided for forfeiture of the area to be allotted to the Petitioner at the rate of 500 sq ft for every month of delay or any part thereof.

3. The project could not be completed in accordance with the terms of the contract. Thus, on 14th August 2015 the parties executed a memorandum for the cancellation of the Agreement dated 19th February 2007.

4. In the wake of the disputes, arbitration was invoked.

5. The Petitioner filed an Application questioning the jurisdiction of the learned Arbitrator and raising the ground of insufficiency of stamp duty on the instruments in question.

6. By the impugned order the learned Arbitrator was persuaded to defer the decision on the issue of jurisdiction, post recording of evidence, but before determination of other issues. The objection in regard to the stamping of the instruments was decided by holding that at the relevant point of time the instruments required additional stamp duty of Rs.400/- and penalty thereon of Rs.1600/-, in accordance with the provisions contained in Section 34 of the Maharashtra Stamp Act 1958 and, thus, the claimant was directed to pay the stamp duty and penalty.

7. Mr. Piyush Raheja, the learned Counsel for the Petitioner, submitted that the learned Arbitrator instead of impounding the document himself determined the deficit stamp duty by invoking the power under Section 37 of the Maharashtra Stamp Act 1958, erroneously. The instruments in question, according to Mr. Raheja, attracted stamp duty in accordance with Article 5, (g-a)(i) of the Schedule I appended to the Act. At any rate, if the said Article did not govern the case, the instrument was required to be stamped in accordance with the Clause h(A)(iv) of Article 5. The learned Arbitrator misconstrued the nature of the contract between the parties to be a

contingent contract and thereby misdirected himself in holding that the instruments in question were governed by residuary Clause h(B) of Article 5.

8. Mr. Raheja would urge that since the determination by the learned Arbitrator under Section 37 is not amenable to an appeal or a revision under the provisions of the Maharashtra Stamp Act, the Petitioner is rendered without any remedy and, therefore, this Court can exercise the writ jurisdiction.

9. In opposition to this, Mr. Khandeparkar, the learned Counsel for Respondent No.3, would urge that the Petition does not deserve to be entertained. The scope of judicial interference in the arbitral proceedings is extremely minimal. Neither the impugned order can said to be patently lacking any inherent jurisdiction nor can the order be said to be perverse. To this end, Mr. Khandeparkar placed reliance on the decisions of the Supreme Court in **Interplay Between Arbitration Agreements under Arbitration And Conciliation Act, 1996 and Stamp Act, 1899, In Re¹** and **Punjab State Power Corporation Limited Vs Emta Coal Limited And Anr²** and **Bhaven Construction Through Authorised Signatory Premjibhai K. Shah Vs Executive Engineer, Sardar Sarovar**

1 (2024) 6 SCC 1.

2 (2020) 17 SCC 93.

Narmada Nigam Limited & Anr³ and a Division Bench Judgment of this Court in the case of **Suchitra Chavan Vs Axis Bank Asset Sales Centre.**⁴

10. Mr. Khandeparkar further submitted that even otherwise there is no merit in the Petition. Under the instrument in question, it was the responsibility of the Petitioner to pay the stamp duty. The Petitioner has yet not been called upon either by the Respondent No.3 or the Revenue to pay the alleged deficit stamp duty. The objection was thus raised with a view to derail the arbitration process.

11. Having heard the learned Counsel for the parties, this Court finds that impugned order does not suffer from such infirmity as to interdict the arbitration proceeding in exercise of writ jurisdiction, which is now held to be an exceptional rarity. The learned Arbitrator has authority to receive the instrument in evidence, by the consent of the parties, and, therefore, competent to pass orders regarding the payment of deficit stamp duty. Thus, it cannot be said that the impugned order suffers from patent lack of jurisdiction.

12. The learned Arbitrator has determined the stamp duty by considering the material terms of contract between the parties. The view of the learned Arbitrator that the first Agreement was in the nature of a contingent contract, cannot be said to be either perverse or so unreasonable as no Court or Authority could have taken the same.

3 (2022) 1 SCC 75.

4 2018 SCC OnLine Bom 2854.

13. Under the terms of the Agreement, the parties had expressly agreed that upon the completion of the project and grant of occupation certificate, the owner shall allot the constructed area to the Contractor as stated in Clauses (2.3) and (3), subject to the third proviso to Clause (5) (which provided for forfeiture of the constructed area on account of delay) by executing another Agreement. Therefore, the determination of the stamp duty by holding that the instrument was within the ambit of the residuary Clause h(B) cannot be said to be so perverse as to warrant interference.

14. The legal position in the matter of interference by the writ Court in the orders passed by the Arbitral Tribunal is fairly crystallized. In the case of **Deep Industries Ltd Vs ONGC**⁵ the Supreme Court cautioned that, though the Writ Petition can be filed under Article 227 of the Constitution of India, yet, the High Court would be extremely circumspect in interfering with the orders passed by the Arbitral Tribunal, and such interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

15. In **Punjab State Power Corporation Ltd (Supra)** while further clarifying the dictum in the **Deep Industries Ltd (Supra)**, the Supreme Court observed that a patent lack of inherent jurisdiction requires no argument whatsoever—it must be the perversity of the order that must stare one in the face.

5 (2020) 15 SCC 706.

16. In the case of **Bhaven Construction (Supra)**, the Supreme Court again emphasized that the power of judicial review needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear “bad faith” is shown by one of the parties. Such high standard set by the Supreme Court is in terms of the legislative intention to make the arbitration fair and efficeint.

17. If the facts of the case at hand are appraised on the aforesaid touchstone, neither the impugned order could said to be lacking in inherent jurisdiction or so perverse as to stare in the face. The fact that, under the Agreement in question, the liability to pay the stamp duty was that of the Petitioner rules out attribution of “bad faith” to Respondent No.3.

18. Therefore, no interference is warranted with the impugned order in exercise of extraordinary writ jurisdiction.

19. Hence the following order:

: O R D E R :

Petition stands dismissed.

No costs.

[N. J. JAMADAR, J.]