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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 303 OF 2025**

Ssakash Developers and Builders Private Limited ... Applicant

vs.

Samit Shetty and Others ... Respondents

Ms. Dhruva Gandhi i/b. Lalit V. Jain for Applicant.

Mr. Aadil Parsurampuriah a/w. Mr. Chirag Sarawagi Somil Gada i/b.

Mr. Tushar Goradia a/w. Mr. Subham Shah a/w. Twinkle Kalla for
Respondent Nos. 1 to 6.

CORAM : GAURI GODSE, J.

DATED : 30th JULY 2025

ORDER:

1. This civil revision application is filed by the defendant to challenge dismissal of the application under Section 8 of the Arbitration and Conciliation Act, 1996 (**'Arbitration Act'**). The application under Section 8 of the Arbitration Act was filed on the ground that in view of the terms and conditions of the redevelopment agreement with the society, the arbitration clause in the redevelopment agreement would be binding upon the members of the society in whose favour the individual agreements are executed. This contention is not accepted by the trial court. Hence,

the application under Section 8 is dismissed.

2. Learned counsel for the applicant relies upon the terms and conditions of the individual agreements executed between the members of the society. He submits that the society is also a signatory to the individual agreements. He relies upon the terms and conditions of the agreement and in particular clause (15) of the agreement. He submits that the parties agreed that in addition to terms and conditions of the individual agreements the terms and conditions recorded in the redevelopment agreement would also be binding upon the parties. He submits that admittedly, the redevelopment agreement provides for arbitration clause. The terms and conditions of the individual agreements are for the purpose of implementing the terms and conditions of the original redevelopment agreement, and the specific terms and conditions of the original redevelopment agreement, and the specific terms and conditions of the individual agreements and clause (15), the arbitration clause would be applicable so far as individual agreements are concerned. He thus, submits that in view of Section 8 of the Arbitration Act, the suit would not be maintainable and the learned Judge should have made a reference to arbitration.

3. To support his submissions, learned advocate for the

applicant relies upon the decision in case of ***NBCC(India) Limited Vs Zillion Infraprojects Private Limited***¹. He relies upon the legal principles laid down in the decision of ***M.R. Engineers and Contractors Pvt Ltd Vs. Som Datt Builders***², reproduced in the said decision in paragraph 16. He relies upon clause (iv) of paragraph 16 and submits that when the contract between the parties stipulates that the condition of contract of one of the parties to the contract shall form a part of the other contract and the arbitration clause forming part of such general conditions of contract, will apply to the contract between the parties. He therefore submits that in view of the terms and conditions of the redevelopment agreement binding upon the parties, the arbitration clause would also apply so far as the individual agreements are concerned.

4. Learned counsel for the plaintiffs submits that the terms and conditions of the individual agreements with the members do not provide for any arbitration clause. He submits that clause (15) is the general clause for all other terms and conditions in the redevelopment agreement which pertains to the performance of agreement between the individual members. He submits that the Hon'ble Apex Court has explained that the arbitration clause from another contract can be incorporated in the contract only by specific

1 (2024) 7 SCC 174

2 (2009) 7 SCC 696

reference to the arbitration clause. He submits that the individual members are not parties to the redevelopment agreement. Hence, the general terms and conditions with reference to the performance of the terms and conditions in individual contract would be binding upon the parties and in the absence of any specific reference to the arbitration clause, the present agreement cannot be referred to arbitration.

5. To examine the submissions made by the parties, I have carefully perused the terms and conditions of the individual agreements between the parties. The agreements provide for performance of the contract between the applicant and the individual members. Clause (15) of the individual agreements read as under:-

“15. In addition to the above terms, all other terms and conditions recorded in the Redevelopment Agreement dated 29-12-2009 shall stand valid, subsisting and binding upon the parties hereto”.

6. The clause (15) starts with the words, ‘in addition to the above terms, all the other terms and conditions recorded in the redevelopment agreement shall be binding’. Thus, clause (15) is required to be read with the earlier conditions containing from paragraph nos. 1 to 14. Thus, it is clear that the binding effect of the

terms and conditions of the redevelopment agreement is with reference to the conditions containing in paragraph nos.1 to 14 of the individual agreements. The binding effect mentioned in clause (15) of the agreements would therefore relate to the performance of the terms and conditions in the earlier paragraphs having reference to the terms and conditions in the redevelopment agreement. The binding effect provided in paragraph 15 does not pertain to all the terms and conditions of the redevelopment agreement. There is no specific reference that the arbitration clause in the redevelopment agreement shall have any binding effect in the individual agreements. Hence, in the facts of the present case, the legal principles settled in the decision of the Hon'ble Apex Court, in paragraph nos. 17 and 18 would support the submissions made on behalf of the plaintiffs. In paragraph no. 17, the Hon'ble Apex Court held that only by a specific reference to the arbitration clause from another contract can be incorporated into the subsequent contract. The relevant principles settled by the Hon'ble Apex Court in paragraph nos. 17 and 18 reads as under:-

"17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into

the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

18. *This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of*

their contract , the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.”

7. Thus, in view of the legal principles explained in the decision of the Hon’ble Apex Court, I do not see any reason to read arbitration clause in the individual agreements, in view of the clause (15) of the individual agreements. Considering the specific terms and conditions agreed between the parties, the view taken by the learned trial court in the impugned order would not require any interference in exercise of discretionary jurisdiction under Article 227 of the Constitution of India.

8. The trial court has examined the terms and conditions of the individual agreements and the pleadings and the prayers in the suit. The impugned order would therefore not require any interference.

9. The civil revision application is therefore dismissed.

(GAURI GODSE, J.)