

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.124 OF 2025

Shri Badrinarayan Laltaprasad Tiwari & Ors.Petitioners

Versus

M/s. Devi kripa Developers & Ors.Respondents

Mr. B.K. Bali *a/w. Ms Pallavi Bali & Mr. Gourav C. Shetye i/b. Bali Associates, Advocates for Petitioner.*

Mr. Shubham Jangam *i/b. Girish R. Agrawal, Advocate for Respondent No.1.*

Mr. J.P. Mishra *a/w. J.S. Shukla, Advocates for Respondent Nos.2 to 4.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 30, 2025

ORDER :

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under a Development Agreement dated February 16, 2009 (***“Agreement”***). The arbitration agreement is contained in Clause 40 (found at Page 61 of the Petition) of the

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Agreement. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. Having heard Learned Counsel for the parties, it is apparent that the Respondents are desirous of filing a counter to deal with allegations of fact made against the Respondents by the Petitioner. However, the existence of the arbitration agreement is not in any doubt.

3. In these circumstances, no useful purpose would be served permitting prolix pleadings on matter of facts which fall outside the scope of jurisdiction of this Court.

4. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of a seven-judge bench in the *Interplay Judgement*¹ followed by multiple others, including *SBI General*² and *Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

5. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement to arbitration by a Sole Arbitrator.

6. The arbitration had a named arbitrator who apparently has a conflict of interest and, consequently, pursuant to allegations by the Respondents, has withdrawn from the proceedings. Both parties leave it to the Court to appoint an arbitrator.

7. Consequently, without any comment on the merits of the matter, leaving it up to the Respondents to robustly counter any allegations of facts before the Arbitral Tribunal, this this Petition is hereby ***finally disposed of***, in terms of the following order:

a) Mr. Rohit Joshi, 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. The contact details of the Learned Arbitrator are set out below:-

Address : 203, Anmol Sapphire,
Baji Prabhu Deshpande Road,
Near Gajanan Vada Pav Centre,
Vishnunagar, Naupada,
Thane (West) – 400 602.

Email Id : Joshi.rohit87@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 the date of upload of this order. 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.

8. 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.

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.]