
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1180 OF 2025
IN
ARBITRATION APPEAL (L) NO. 36780 OF 2024

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TALEKAR

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SHRADDHA KAMLESH
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Mrs. Darshana Nilesh Sawant
Partner of M/s. Ashwamedh
Builders and Developers (Mumbai)

... Applicant/Appellant

Vs

Mr. Sanjay Ramdas Thakkar

.. Respondent

Mr. Pavan Patil *a/w. Dewang Mhatre and Nupoor Gadade, for Applicant / Appellant.*

Mr. Chiettesh Dalmia *i/b Jugal Kanani, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : June 11, 2025

Oral Judgement:

1. The primary grievance in this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) impugning an award passed under Section 17 of the Act is the denial of reliefs claimed in prayer clauses (b) and (f). All prayers other than prayer clause (c) have been rejected by the Learned Arbitrator.

2. The primary reason for denial of prayer clause (b) is that it seeks intervention into the interests of third parties to whom various flats are said

to have been committed to be sold by way of agreements executed with them. Denial of certain other reliefs such as appointment of a receiver and taking up possession of the said flats is also based on the same principle that the third parties are the ones who would be affected by such relief and directions against them cannot be passed in a private arbitration.

3. Learned Counsel for the Appellant submits that the third parties who are named in prayer clause (b) are but investors in the project. He would contend that the Respondent has unilaterally agreed to transfer these flats to them in discharge of the financial obligations owed to them and such discharge is being effected at hugely discounted values since the flats are worth more than what is owed to them. Moreover, these very flats had been committed to be sold to other flat purchases, he would contend, and such others are now demanding performance.

4. After the matter was argued for some time, it was put to Learned Counsel for the Appellant if he would be willing to pursue the remedy of seeking impleadment of such third parties invoking known principles of law *inter alia*, those enunciated in ***Cox and Kings Ltd.***¹ for impleadment of third parties, particularly taking into account, his contention that the said third parties are but investors in the very same project.

¹ *Cox and Kings Ltd. Vs. SAP India Pvt. Ltd. & Anr – (2022) 8 SCC 1*

5. Learned Counsel for the Appellant, then sought leave to withdraw this Appeal with liberty to pursue an application for impleadment of such third parties so that he could pursue the impleadment with the Learned Arbitral Tribunal to enable the Learned Arbitral Tribunal to deal with the same and appropriately consider the intervention necessary against the said “third parties” who are but said to be investors in the very same project. *Prima facie*, the fact that the said third parties have an investment in the very same project makes it pertinent to implead them, and therefore, leave is indeed granted for such impleadment application.

6. Another grievance is about the rejection of the prayer for opening of an escrow account since the Petitioner has frozen the bank accounts in view of the Respondent having allegedly withdrawn amounts from the bank accounts. The Learned Arbitral Tribunal has directed that the parties may engage with each other reasonably and work out a resolution. Evidently, they have not worked out a resolution. Consequently, liberty is also granted to re-agitate this issue before the arbitral tribunal.

7. With the aforesaid directions, and in these circumstances, the Appeal is ***disposed of*** as ***withdrawn*** with liberty to file an appropriate application for impleadment of the said third parties and to re-agitate the issue of creating an escrow account since the parties have not been able to resolve a

mechanism to ensure preservation of the monies that would fall within the subject matter of the dispute.

8. Needless to say, such application, if filed, shall be considered by the Learned Arbitral Tribunal without being influenced by the rejection already contained in the impugned order.

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.]