



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.140 OF 2024

Jaysukh Nagjibhai Sapra and Ors.

...Petitioners

V/s.

Piramal Capital Housing Finance Ltd.
and Anr.

...Respondents

WITH
COMMERCIAL ARBITRATION PETITION NO.141 OF 2024
Jaysukh Nagjibhai Sapra and Ors.

...Petitioner

V/s.

Piramal Capital Housing Finance Ltd.
and Anr.

...Respondent

Mr. Shreyas Shrivastava with *Mr. Yogesh Devnani & Mr. Chirag Hathiramani for the Petitioners.*

CORAM: SANDEEP V. MARNE, J.

DATED: 11 DECEMBER 2025.

P.C.:

1) These Petitions are filed under Section 34 of the Arbitration and Conciliation Act 1996 (the Arbitration Act) challenging the arbitral awards dated 5 April 2022 passed by the learned sole Arbitrator. By the two impugned arbitral Awards the learned sole Arbitrator has held the Petitioners and Respondent No.2 jointly and severally liable to pay the amounts indicated in the Award with a further direction that the said amount can be recovered from sale of the mortgaged property being Flat Nos.103 and 104, first floor,

C Wing, Building No.2, Chakravarti Ashok J.B. Nagar, Off Sahar road, near Bombay Cambridge School, Andheri (East), Mumbai -400 093.

2) I have heard Mr. Shrivastava, the learned counsel appearing for the Petitioner in both the Arbitration Petitions and considered the submissions canvassed by him. I have also perused the records of the case.

3) By order dated 9 December 2022 notices were issued to the Respondents. Court notices are apparently served on Respondent No.1, who was claimant before the Arbitral Tribunal. It appears that service of court notice on Respondent No.2 has failed. Accordingly, this Court permitted service of notice on Respondent No.2 through paper publications by order dated 4 November 2025. The learned counsel appearing for the Petitioners has filed affidavit of service of paper publication in respect of Respondent No.2. Despite being served, none has chosen to appear on behalf of either of the Respondents.

4) First objection of the Petitioner to the impugned Award is that the appointment of the Arbitrator was done unilaterally by Respondent No.1. It appears that by letter dated 22 January 2022 the Arbitrator was unilaterally appointed by Respondent No.1. It is the case of the Petitioners that they have not entered into any agreement for purchase of flat Nos.103 and 104, which are shown to have been mortgaged to Respondent No.1. It is contended that the loan transaction is a private arrangement between Respondent No.1-Financier and Respondent No.2-Developer without actual sale transaction of the flats in question. Be that as it may. The Petitioners

complain that they were not afforded any opportunity of hearing before passing of the arbitral Awards. It is also complained that the learned Arbitrator had more than 350 arbitration cases pending with him as per the declaration made by him under the 6th Schedule.

5) It appears that appointment of the Arbitrator was done unilaterally by Respondent No.1 by letter dated 22 January 2022. Immediately within 8 days the learned Arbitrator proceeded to issue notice dated 1 February 2022 and fixed the proceedings on 8 March 2022 for appearance on behalf of the Petitioners and Respondent No.2. According to Petitioners when the representative approached the Arbitral Tribunal on 8 March 2022 the premises were found to be locked. Minutes of meeting held on 8 March 2022 indicate that Arbitral Tribunal proceeded to close the arbitral proceedings for passing of Award on 5 April 2022. It is not clear from the minutes of meeting dated 8 March 2022 as to whether Claimant produced any evidence in support of his claim. The Arbitral Tribunal further hurriedly closed the proceedings for passing of Award on 5 April 2022, when the Awards are made in both the arbitral proceedings. The manner in which the Arbitral Tribunal has proceeded to act in the present case indicates that the arbitral proceedings are conducted in a hurried manner without affording proper opportunity of hearing to the Petitioner. Furthermore, it is observed that the learned Arbitrator had apparently over 340 arbitral matters of Respondent No.1. Reliance is placed on judgment in *Sawarmal Gadodia V/s. Tata Capital Financial Services Limited*¹ in which this Court has frowned upon the learned Arbitrator therein for handling over 250 arbitration proceedings. The

¹ Arbitration Petition No.560 of 2019, decided on 15 May 2019.

Award of the learned Arbitrator was set aside in ***Sawarmal Gadodia*** (supra) *inter alia* on the ground of handling of large number of arbitration proceedings.

6) In my view, in the present case as well the arbitral Award suffers from the vice of patent illegality since the appointment of the Arbitrator is made unilaterally by Respondent No.1. There is complete violation of principles of natural justice as the arbitral proceedings were closed for making of Award on the next date itself. Arbitral proceedings appear to be mere farcical show. Thirdly, the Arbitral Tribunal was handling large number of arbitration matters of Respondent No.1 cannot be expected to be neutral. There is thus absence of judicial approach on the part of the learned Arbitrator, which is again valid ground for setting aside the arbitral Award in exercising power under Section 34 of the Arbitration Act. Respondent No.1 would not be remediless and can take appropriate measures for constitution of fresh arbitral tribunal for the purpose of adjudication of its claims against Petitioner and Respondent No.2.

7) The Apex Court in ***Central Organisation for Railway Electrification V/s. ECI SPIC SMO MCML (JV) A Joint Venture Company***² has held as under:

129. Equal treatment of parties at the stage of appointment of an arbitrator ensures impartiality during the arbitral proceedings. A clause that allows one party to unilaterally appoint a sole arbitrator is exclusive and hinders equal participation of the other party in the appointment process of arbitrators. Further, arbitration is a quasi-judicial and adjudicative process where both parties ought to be treated equally and given an equal opportunity to persuade the

²2025 (4) SCC 641

decision-maker of the merits of the case. An arbitral process where one party or its proxy has the power to unilaterally decide who will adjudicate on a dispute is fundamentally contrary to the adjudicatory function of Arbitral Tribunals.

xxx

170.5. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

8) Consequently, Arbitration Petitions succeed and I accordingly proceed to pass the following order:-

- i. Awards dated 5 April 2022 passed in both the Petitions are set aside.
- ii. Arbitration Petitions are allowed to the above extent.
- iii. There shall be no order as to costs.

9) Arbitration Petitions stand **disposed of**.

[SANDEEP V. MARNE, J.]