

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO.430 OF 2024

Kinjal Dattatray Patil

....Petitioner

V/S

Nandadeep Co-operative
Housing Society Ltd.
Govandi, Mumbai

....Respondent

Mr. Abhay S. Khandeparkar, Senior Advocate with Ms. Hetal Patel, Mr. Rohit Mahadik, Mr. Suraj Shetye, Mr. Hemanshu Vyas and Ms. Priyasha Pawar *for the Petitioner.*

Mr. Saurabh Butala with Ms. Manvi Sharma, Ms. Aishwarya Hinge and Mr. Harshad A. Sathe *for Respondent.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 16 DECEMBER 2025.**

ORDER:

1. By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), Petitioner challenges Award dated 1 November 2022 passed by the learned sole Arbitrator. By the Impugned Award, the learned Arbitrator has dismissed the claims of the Petitioner as barred by limitation.

2. Petitioner is a Developer. Respondent is a cooperative housing society (**Respondent-Society**) formed by employees of Municipal Corporation of Greater Mumbai (**MCGM**). Respondent-Society is seized and possessed of plots of land bearing Nos.9, 10, 11 and 15

admeasuring 5634 square meters of thereabouts at Sector-II, Deonar Municipal layout bearing Survey No.93, CTS No.1/3, village Deonar, Mumbai Suburban District (**the land**). The land is leased by MCGM in favor of Respondent-Society for a period of 60 years. In the year 1987 Respondent-Society constructed a building on the land comprising of Ground plus two upper floors having five wings. The plots in the building are occupied by members of the Respondent-Society who are employees of MCGM. In the year 2007 Respondent-Society decided to redevelop its building. Accordingly, Development Agreement and Power of Attorney dated 11 August 2007 was executed between the Petitioner and the Respondent-Society.

3. It appears that construction activity in accordance with the Development Agreement could not be completed. The Respondent-Society terminated the Development Agreement and Power of Attorney vide letter dated 31 August 2015.

4. The Petitioner replied the termination notice on 15 September 2015. According to the Petitioner, certain committee members of the Respondent-Society approached MCGM for cancellation of the Intimation of Disapproval (**IOD**) and Commencement Certificate (**CC**). According to the Petitioner, meetings took place with the MCGM officials with a view to resolve the disputes. In the above background, Petitioner invoked arbitration by letter dated 1 October 2018. Petitioner filed Arbitration Application No.219 of 2019 in which the learned sole Arbitrator was appointed.

5. Petitioner filed Statement-of-Claim. Respondent-Society filed Statement-of-Defence as well as Counterclaim. Respondent-Society

also filed Application dated 24 October 2020 seeking dismissal of the Petitioner's claim as being barred by limitation. It appears that Petitioner filed application for dismissal of Respondent-Society's Counterclaim as barred by limitation. Both the applications have been decided by the learned Arbitrator vide impugned Award dated 1 November 2022. The learned Arbitrator has dismissed the claims of the Petitioner as being barred by limitation by allowing the application preferred by Respondent-Society. The Respondent-Society did not press the counterclaim against Petitioner and accordingly, the counterclaim of the Respondent-Society is also dismissed. Petitioner is aggrieved by the Award dated 1 November 2022 and has filed the present Petition under Section 34 of the Arbitration Act.

6. Mr Khandeparkar, the learned senior advocate appearing for the Petitioner-Developer has submitted that the learned Arbitrator has grossly erred in deciding the issue of limitation by way of interim Award without letting parties to lead evidence. That issue of limitation is only on question of law and fact, and could not have been decided merely on the basis of pleadings. He would submit that it is a specific case of the Petitioner-Developer that the issue of termination was under discussion with the land owner i.e. MCGM and that therefore right to sue had not accrued. That the termination was thus not final and subject to the intervention by the MCGM. Since the members of Respondent-Society are municipal employees, the Petitioner waited for resolution of disputes through MCGM. That in such circumstances, right to sue cannot accrue merely upon receipt of termination letter, and the same accrued only after discussions failed before the MCGM. He would submit that the issue of accrual of right to sue is a question

of fact in the present case and the same can be proved by leading evidence. He would therefore submit that the impugned Award be set aside by grant of opportunity to the Petitioner to lead evidence in support of its plea of the claim being within limitation.

7. The Petition is opposed by Mr. Butala, the learned counsel appearing for the Respondent-Society. He would submit that the Arbitral Tribunal has passed a well-considered award. That the Arbitral Tribunal has adopted a view based on the material on record that the claim is barred by limitation. That such view taken by the Arbitral Tribunal cannot be interfered with by this Court under Section 34 of the Arbitration Act. That Petitioner has failed to make any of the enumerated grounds under Section 34 of the Arbitration Act while setting up a challenge to the impugned award. That the decision on the issue of limitation did not require leading of evidence. That the Arbitral Tribunal has recorded a finding of fact that right to sue accrued on the date of receipt of termination notice. That the said finding cannot be disturbed by this Court by exercise of power under Section 34 of the Arbitration Act. He would submit that the so-called discussions organized by the MCGM at the behest of the Petitioner-Developer did not amount to extension of period of limitation. He would pray for dismissal of the Petition.

8. I have considered the submissions canvassed by the learned counsel appearing for the rival parties. I have gone through the findings recorded by the Arbitral Tribunal. I have also perused the records of the case filed alongwith the Petition.

9. The Arbitral Tribunal has allowed the application preferred by the Respondent-Society seeking dismissal of the claim of the Petitioner-Developer as being barred by limitation. Petitioner-Developer had sought dismissal of counterclaim of the Respondent-Society on the ground of limitation. However, since Respondent-Society did not press the counterclaim, the same has been dismissed by the Arbitral Tribunal without deciding the issue of limitation in filing the counterclaim. Thus the short point involved in the present Petition is about correctness of the Award made by the Arbitral Tribunal dismissing the claims of the Petitioner-Developer as being barred by limitation.

10. The main objection sought to be raised by the Petitioner-Developer to the impugned Award is that the issue of limitation could not have been decided at an interim stage in absence of leading of evidence. However, in paragraph 3 of the Arbitral Award, the Tribunal has noted as under:

“Both sides are agreed that the present issue of limitation in both the aforesaid applications can be disposed of by this Tribunal either under Section 16 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) or by way of an interim Award under Section 31 (6) of the Arbitration Act.”

11. Thus Petitioner himself agreed before the Arbitral Tribunal that Respondent-Society’s application on the issue of limitation could be decided either under Section 16 or Section 31 (6) of the Arbitration Act. Moreover while criticizing the arbitral tribunal for deciding the issue of limitation by interim award under Section 31(6), Petitioner conveniently ignores its own conduct of seeking dismissal of society’s counterclaim as preliminary issue by filing an application to that effect.

The Petitioner cannot now turn around and question the wisdom of the Arbitral Tribunal in deciding the issue of limitation by way of an interim Award. Having expressly agreed before the Arbitral Tribunal that the issue of limitation could be decided by an interim Award, Petitioner cannot be permitted to urge before me that the Award be annulled on account of decision of issue of limitation under Section 31(6) of the Arbitration Act.

12. Even otherwise, under Section 31(6) of the Arbitration Act the Tribunal is empowered to make an interim Award on any matter with respect which it can make a final Award. Section 31(6) of the Arbitration Act provides thus:

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

13. Thus the Arbitral Tribunal is fully empowered to decide the issue of limitation by making an interim Award under Section 31(6) of the Arbitration Act.

14. Apart from the fact that the Petitioner-Developer himself agreed for deciding the issue of limitation under Section 31(6) of the Arbitration Act, in my view, no error is committed by the Arbitral Tribunal in deciding the issue of limitation based on pleadings. For deciding the issue of limitation in the present case, leading of evidence was not necessary. In his Statement-of-Claim, Petitioner had sought a declaration that the Development Agreement and Power of Attorney dated 11 August 2007 are legally valid and binding, and a prayer for injunction against the Respondent-Society from obstructing the

development work. Petitioner-Developer also sought damages from Respondent-Society as an alternate remedy. The substantive prayers in the Statement-of-Claim read thus:

- a) The Claimant humbly prays that the Hon'ble Arbitral Tribunal declare that Development Agreement and Power of Attorney both dated 11th August 2007 are legally valid and binding-on the Respondent Society and the Respondents Society is liable to be restrained from obstructing developing work;
Alternatively
- b) That the Respondent be directed to pay to the Claimants total sum of Rs. 07,89,07,957/-
- i) As a damages a sum of Rs. 02, 50,00,000/-on account deprivation/loss of business opportunity and business income.
- ii) As damages a sum of Rs. 01, 50,00,000/- on account of defamation / loss of Reputation and for mental agony, harassment suffered by the Claimant.
- iv) a sum of Rs. 03,89,07,957/- spent by the claimant till date for carrying out work in the Respondent Society;
- c) Such other cost, expenses and interest as this Hon'ble Arbitral Tribunal deems fit and appropriate;
- d) Interest on the above mentioned damages as this Hon'ble Arbitral Tribunal may deem fit and proper;

15. The Arbitral Tribunal has rightly considered the provisions of Article 58 of the Limitation Act in which the period of limitation prescribed for obtaining any declaration is three years after the right to sue first occurs. Article 58 of the Limitation Act specifically uses the word "first". In the present case, the cause of action for invoking arbitration was termination of Development Agreement by Respondent-Society vide termination letter dated 31 August 2015. Therefore, even if contention of the Petitioner-Developer about discussions taking place with MCGM is to be accepted as factually correct, the invocation ought to have been done within three years from

receipt of termination letter. The Arbitral Tribunal has rightly relied upon judgment of the Apex Court in ***Khatri Hotels Private Limited vs. Union of India and Anr.***¹ in which it is held that if a suit is based on multiple causes of action, the period of limitation would begin to run from the date on which right to sue first accrues. Mere successive violation of right does not give rise to fresh cause of action. Therefore, applying this principle, it cannot be contended that failure of alleged discussions before the MCGM gave rise to fresh cause of action to the Petitioner-Developer.

16. In ***Board of Trustees of Port of Kandla vs. Hargovind Jasraj and Anr.***², the judgment in ***Khatri Hotels*** (supra) is followed and it is held that the right to sue first accrued when the lease was terminated and dispossession of lessee on subsequent date did not extend the period of limitation. The Apex Court held that the Suit was required to be filed within three years of date of termination of lease and not from the date on which the lessee was dispossessed. In my view, the judgments of the Apex Court in ***Khatri Hotels*** and ***Board of Trustees of Port of Kandla*** (supra) squarely cover the issue involved in the present case. The termination notice dated 31 August 2015 has been admittedly received by the Petitioner-Developer on 7 September 2015 and accordingly, period of limitation for invoking the arbitration clause expired on 7 September 2018. The invocation of arbitration clause by letter dated 1 October 2018 was clearly barred by limitation.

17. So far as the alternate relief in clause (b) of the Statement-of-Claim is concerned, the same relates to damages/compensation arising

1 (2011) 9 SCC 126

2 (2013) 3 SCC 182

out of termination. The Arbitral Tribunal has relied on Article 55 of the Limitation Act which again provides for a period of limitation of three years from the date when the contract is broken. In the present case, the time for seeking the relief of damages/compensation would begin to run from the date on which the contract is perceived to be broken by the Petitioner-Developer which is 7 September 2015 when the termination notice was received by him. Therefore, even relief in prayer clause (b) of the claim is rightly held to be barred by the limitation.

18. Beyond contending that the discussions held with MCGM gave rise to fresh cause of action and that the right to sue accrued only after failure of discussions, no other material, judgment or provision of law is brought to my notice on the basis of which it can be concluded that though the right to sue had first accrued on receipt of termination notice on 7 September 2015, the Suit could have been filed within three years of failure of the alleged discussions with MCGM. The view adopted by the Arbitral Tribunal cannot be treated as either perverse or so irrational that no reasonable minded person would ever adopt. No case of conflict with public policy of India or patent illegality in the award is made out. The view adopted by the Arbitral Tribunal appears to be consistent with the public policy of India.

19. The Award appears, to my mind, as unexceptionable. No case is made out for interference in the same. Arbitration Petition is accordingly **dismissed**. There shall be no order as to costs.

SUDARSHAN
RAJALINGAM
KATKAM

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RAJALINGAM KATKAM
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(SANDEEP V. MARNE, J.)

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