

PURTI
PRASAD
PARAB

Digitally signed by
PURTI PRASAD
PARAB
Date: 2025.11.12
18:32:45 +0530

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

ARBITRATION PETITION NO. 43 OF 2025

Sangvi Lifespace Pvt. Ltd.

...Petitioner

Versus

1. Megh Mahal Co-operative Housing Society
Ltd.

2. M/s. Samarpan Homes and Developers

...Respondents

WITH

ARBITRATION PETITION NO. 30 OF 2025

Sangvi Lifespace Pvt. Ltd.

...Petitioner

Versus

Megh Mahal Co-operative Housing Society
Ltd.

...Respondent

Mr. Ashish Kamat, Senior Advocate *a/w Ms. Neeta Jain and Mr.R.B. Singhvi and Mr. Dhruvil C. Shah i/b Lex Services for the Petitioner.*

Mr. Sharan Jagtiani, Senior Counsel *a/w Mr. Mutahhar Khan, Mr. Sachin Mhatre, Ms. Ishita Kamath, Ms. Sharmili Mhatre and Ms. Diksha Shiroadkar i/b Mhatre Law Associates for Respondent No.1 in both the Petitions.*

Mr. Dharmesh Jain *for Respondent No.2 in Arbitration Petition No. 43 of 2025”.*

CORAM:

SOMASEKHAR SUNDARESAN, J.

DATE:

NOVEMBER 3, 2025

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) challenging an order dated August 25, 2023 (***“Impugned Order”***) passed by the Learned Arbitral Tribunal rejecting an Application filed by the Petitioner, Sangvi Lifespace Pvt. Ltd. (***“Developer”***) under Section 17 of the Act. The Section 17 Application sought a restraint on a Termination Notice dated June 23, 2022 (***“Termination Notice”***) to bring to an end a registered Development Agreement dated September 15, 2019 (***“Development Agreement”***) between the Developer and the Respondent, Megh Mahal Co-operative Housing Society Ltd. (***“Society”***).

2. The Development Agreement provided for the development of property owned by the Society admeasuring approximately 1290.40 square metres in Borivali (East), Mumbai. The Development Agreement had been approved by 36 out of 40 members at a Special General Body Meeting held on July 7, 2016 and had been approved by the Deputy Registrar in terms of Rule 29A confirming the appointment of Developer by the Society.

3. Under the Development Agreement the Developer had exclusive rights to act as such to redevelop the property of the Society

and demolish the old building standing thereon to construct a new multi-storeyed building. Under the Development Agreement, the Developer was entitled to utilise and exploit the maximum development potential available for consumption in the form of floor space index (“**FSI**”), which would entirely be vested in the Developer. The entire development potential was made available to the Developer for his consumption, which could be further enhanced by the Developer by deploying transferable development rights (“**TDR**”), if any, in accordance with law. In other words, the Developer was fully authorised to exploit the entire development potential freely and to create third party rights, including the sale of the free sale area, as part of the development.

4. In the event of any increase in the FSI available, due to any regulatory change or incentive benefits, such increased FSI could also be utilised at the Developer’s discretion for such construction. It was agreed that any increased FSI above a threshold, would be shared between the Developer and the Society in the ratio of 64:26. The Society was not meant to contribute any further for the increased FSI and the Developer was meant to make such endeavour as possible to increase the members’ entitlement in the new premises to the extent of 36%.

5. Being aggrieved by the termination effected by the Society on October 24, 2019, the Developer filed a Petition under Section 9 of the Act in Arbitration Petition No. 285 of 2020, seeking intervention against such proposed termination. This led to the parties filing Consent Terms on March 24, 2021, followed by execution of a Supplementary Agreement dated June 24, 2021 ("*Supplementary Agreement*").

6. Under the Supplementary Agreement it was agreed that the Society would have no objection if the Developer were to amalgamate the plot of land with an adjoining plot of land, which the Developer had acquired from the owner of that plot, for purposes of the same redevelopment. Subject to the amalgamation being approved by the authorities, the Developer would provide additional benefits arising out of amalgamation to the members of the Society.

7. Under the Supplementary Agreement the Developer had agreed to provide each member of the Society, a self-contained residential flat in the proposed building which would admeasure carpet area of the existing flat, enhanced by 35% of additional carpet area instead of 27% enhancement originally contracted under the Development Agreement. Should the amalgamation not take place, the additional area would remain 27% as contemplated in the Development

Agreement. While this was the arrangement for the residential members, for the commercial members the enhancement would be by 18% instead of the 16% enhancement contemplated under the Development Agreement.

8. The parties also agreed on defining *force majeure* conditions in the Supplementary Agreement, one of which was the result of any embargo, Notice, Order, Rule or Notification or directive of the Government and/or any other public body or authority or of any Court due to which the redevelopment of the property could adversely be affected.

9. On the same day, i.e. on June 24, 2021, the Power of Attorney was also executed by the Society in favour of the Developer enabling him to act upon the rights contemplated under the Development Agreement and the Supplementary Agreement.

10. On *February 23, 2022*, a draft of the Permanent Alternate Accommodation Agreement ("**PAAA**") was circulated by the Developer in response to which certain clarifications were sought and a revised draft was shared on *March 7, 2022*. On *May 2, 2022*, the Developer informed the Society about Intimation of Disapproval ("**IOD**") for the Society's property along with the adjoining plot was expected to be

received in 15 to 20 days. This IOD was based on development of the amalgamated land (including the adjoining plot) and not just the land belonging to the Society.

11. On *May 11, 2022*, one Ms. Indubai Phadtare filed Suit No. 1143 of 2022 in the City Civil Court, Dindoshi challenging a notice issued by the Municipal Corporation of Greater Mumbai (“**MCGM**”) under Section 51 of the Mumbai Municipal Corporation Act, 1888 (“**MMC Act**”). Such notice dated *March 28, 2022* was for demolition of a structure situated on the adjoining plot. On *May 26, 2022*, the Society sought a discussion on various issues including the status of the notice issued by the MCGM to the eligible unauthorised occupants in the adjoining plot and requested that all the issues be resolved by the Developer before issuance of vacating notice.

12. Again, on *June 7, 2022*, the Society sought clarifications on implications of the stay granted by this Court on the demolition of unauthorized structures on the adjoining plot and requested that the Developer to act expeditiously since the monsoon was approaching. On *June 11, 2022*, the Developer informed the Society about the IOD having been obtained and requested that the parties execute the PAAA to start

paying rent in terms of the Development Agreement and the Supplementary Agreement.

13. Meanwhile, the owner of the adjoining plot who had conveyed it to the Developer, made a police complaint about the trespass on the adjoining plot. Eventually, in an Appeal from Order, this Court directed both the MCGM and the encroachers on the adjoining plot and maintain *status quo* on the adjoining plot. On *June 14, 2022*, a stay was granted on the demolition proposed by the MCGM, on the allegedly unauthorised structure on the adjoining plot, and the matter is pending before a bench of this Court. On *June 23, 2022*, the Society issued a detailed 37-page Termination Notice to the Developer, to terminate the Development Agreement and the Supplementary Agreement.

14. This is the Termination Notice that formed the subject matter of an Application under Section 17 of the Act filed by the Developer before the Learned Arbitral Tribunal.

Contentions of the Parties:

15. I have heard at length Mr. Ashish Kamat, Learned Senior Counsel on behalf of the Developer and Mr. Sharan Jagtiani, Learned Senior Counsel on behalf of the Society.

16. The grievance of the Developer is that the Impugned Order, in denying relief to the Developer, would defeat the subject matter of the arbitration agreement and erode the prospect of final relief sought in the arbitration proceedings. The reliefs sought in the arbitration proceedings are for specific performance of the Development Agreement and the Supplementary Agreement and in the alternate, an award of damages

17. Mr. Kamat would point out that in Section 9 Petition, by an order dated *December 1, 2022*, this Court had directed that *status quo* be maintained with the new developer not claiming any equities until disposal of Section 17 Application by the Learned Arbitral Tribunal. That position was continued until the Impugned Order was passed. According to Mr. Kamat, the position of not claiming equities is something that continue till date because the new developer namely Samarpan Homes and Developers Pvt. Ltd. was appointed by the Society and had commenced work without claiming any equities.

18. Arbitration Petition No. 43 of 2025 came to be filed seeking injunction against creation of third-party rights with respect to units constructed by the new developer. According to Mr. Kamat the Termination Notice alleged that there was a delay in issuing the vacating

notice, but the Impugned Order has not considered that it was the Society that requested the Developer to resolve the issues relating to the adjoining plot before issuing a vacating notice. He would point to multiple contents of the Termination Notice to suggest that the termination has not been appropriately appreciated by the Learned Arbitral Tribunal. In a nutshell, he would submit that the right conferred on the Developer by way of an option to amalgamate the adjoining plot with the Society's plot, with a larger area being given to the members of the Society, has been interpreted by the Learned Arbitral Tribunal as an obligation on the part of the Developer to redevelop the merged plot and provide a larger area to each member, which has not been implemented because it was not possible to implement it in view of the injunction issued by this Court. Therefore, he would contend that he was always ready and willing to implement the Development Agreement, without the optionality contracted in the Supplemental Agreement, and this subject matter ought to have been preserved by the Learned Arbitral Tribunal.

19. Therefore, Mr. Kamat would contend, the Impugned Order is perverse. That apart he would point to multiple observations in the Impugned Order that correct appreciate the position of fact in favour of the Developer. The Learned Arbitral Tribunal has specifically concluded

that there has been no delay on the part of the Developer for obtaining IOD and no default in providing compensation or indeed any other activity under the Development Agreement and the Supplementary Agreement. Mr. Kamat would focus on three specific facets of the Impugned Order to contend that it is palpably perverse, necessitating intervention by this Court.

20. *First*, he would contend that the failure to amalgamate the adjoining plot with the Society's plot is the ground on which the Impugned Order sustains the Termination Notice. Even on a *prima facie* basis, he would submit, Clause 7 of the Supplementary Agreement confers a right and imposes no obligation on the Developer to only implement redevelopment on the merged plot. The Society could not insist on amalgamation since it had agreed that should the amalgamation not take place the original terms of the Development Agreement would run their course. The only reason the development of amalgamated plot could not take place was because of the *status quo* order directed by this Court restraining the demolition of the structure by the MCGM on the adjoining plot. The Developer has expressed his readiness and willingness to develop the land belonging to the Society without the adjoining plot and this is something that he would be entitled to in terms of the Development Agreement.

21. *Second*, Mr. Kamat would submit that the purported “loss of confidence” in the Developer expressed by the Society is self-serving. He further submits that on May 26, 2022 and June 6, 2022 it was the Society and its members that sought a discussion on the redevelopment. Likewise, on June 7, 2022 the Society’s Secretary sent an e-mail seeking an update in the matter in view the of stay granted to Ms. Indubai Phadtare on the adjoining structure and an e-mail dated June 11, 2022 sent by the Developer to the Society informing that the IOD was being obtained and also queries raised by the Society were being addressed. On June 21, 2022 the Developer informed the Society about IOD actually having been obtained and requested the members to vacate the premises. The upshot of the submission is that the Developer had eminently performed under the Development Agreement and the Supplementary Agreement, and therefore the purported loss of confidence is entirely untenable.

22. *Third*, Mr. Kamat would submit that the provisions of the Development Agreement, which confer various rights upon the Developer along with the Power of Attorney executed concurrently with the Supplementary Agreement has already created rights and interests in favour of the Developer in the property of the Society. He would therefore submit that the pre-existing rights that came into existence in

favour of the Developer cannot be wiped out lightly as has been done by the denial of relief by the Learned Arbitral Tribunal when dealing with the Section 17 Application.

23. As a separate note Mr. Kamat would submit that the advocate on record for the alleged encroachers in the adjoining plot is the same as the Society's advocate, which insinuates that there is potential conflict of interest or concerted action to frustrate rights of the Developer.

24. Mr. Sharan Jagtiani on behalf of the Society would contend that the Impugned Order has nothing perverse or implausible in it and the Learned Arbitral Tribunal should be given a reasonable play in the joints to come up with its view on what is an appropriate response to a Section 17 Application. He would submit that the Developer has already been a defaulter in an earlier round and it is when he breached the commitments that the Consent Terms were negotiated and an integral feature of the Consent Terms was the element of enhancing the area to be given to the members of the Society, after the redevelopment was renegotiated on the basis of the amalgamated plot to include the adjoining plot.

25. Mr. Sharan Jagtiani would submit that the IOD is based on the amalgamated plot being developed and that is now not possible with the litigation over the structure standing on that plot.

26. The Society would contend that the Developer was in default in payment of two tranches of hardship compensation within 15 days from the registration of the Development Agreement and is thereby in material breach of the contracted obligations. It was also argued that in any case the Society would be entitled to terminate the Development Agreement read with the Supplementary Agreement and since the Society had lost confidence in the Developer it cannot be forced to continue the redevelopment work with such developer with a track record of default.

27. Therefore, faced with a Developer who had already failed to develop in the past and re-entered a new agreement on newer terms, which terms are not capable of being performed, the Learned Arbitral Tribunal has returned a fair and plausible formulation taking note of the fact that the Developer could still get damages and does not necessarily qualify for specific relief.

Impugned Order:

28. Before the Learned Arbitral Tribunal, the Society contended that the Developer is simply unable to perform the obligations contracted in the Development Agreement read with the Supplementary Agreement inasmuch as, by an order of this Court, *status quo* is required to be maintained on the adjoining plot. The Society contended that it has a vested right to insist on redevelopment including the adjoining plot and it would no longer suffice if the terms of the redevelopment were restricted to the Development Agreement as if the Supplementary Agreement had never been executed. The Society also claimed that it had never called upon the Developer not to issue vacating notice and had only asked legitimate questions about the evident hurdles to the development. The Developer contended that the time was not the essence of the contract, particularly since the Development Agreement did not mention so, and therefore the Society must be restrained from terminating the Development Agreement and proceeding further with the other developer.

29. The Learned Arbitral Tribunal has noticed that a tender for the redevelopment had been floated as far back as in October 2015. A Special General Body Meeting to approve the appointment of the

Developer took place way back on July 7, 2016. The appointment of the Developer had been confirmed on July 19, 2016 and the Developer had been requested to prepare the Development Agreement which was circulated only by September 13, 2016. Eventually, execution of the Development Agreement itself took place over three years later on September 15, 2019. Meanwhile, the Learned Arbitral Tribunal observed, the Developer was desirous of amalgamating the adjoining plot with the plot of the Society, the Developer having executed the Deed of Conveyance in his favour with one Mr. Chandrakant Ovalekar for the adjoining plot.

30. Within six weeks the parties fell out with each other, and this led to the issuance of the Termination Notice. This would lead to an injunction by an order dated October 24, 2019, which led to further negotiations. That came to be settled by way of Consent Terms dated March 24, 2021. The Learned Arbitral Tribunal therefore decided not to deal with the allegations made by the parties against each other between 2016 and 2021, and instead focussed on their interactions after the Supplementary Agreement dated June 24, 2021. Seen in this perspective, the Learned Arbitral Tribunal analysed the submissions made by the parties and came to the view that the Developer had informed the Society, at an advanced stage of the negotiations of the

Development Agreement. The Developer would acquire the adjoining plot of land and the Society gave its no objection for amalgamation of both the plots of land. Therefore, the Supplementary Agreement even recited that the adjoining plot of land was now available for amalgamation with the Society's land.

31. It is in this backdrop, that the Supplementary Agreement provided for 35% additional area benefit as opposed to 27% additional area benefit originally contracted between the parties. Likewise, for members with commercial units, the enhancement was 18%, up from the erstwhile 16% of additional area.

32. Upon analysing the various directions and conditions of the two agreements and the factual developments in the matter, the Learned Arbitral Tribunal also observed that the IOD relates not to the Society's plot of land alone but to the amalgamated plot. One of the conditions of the IOD was to hand over the setback area to the MCGM. Considering that the order of injunction would result in compliance with the IOD conditions being impossible, it was found by the Learned Arbitral Tribunal that the IOD obtained by the Developer could no longer be utilised for carrying out any redevelopment of the Society premises. This would necessitate applying afresh all over again for a

new IOD without any reference to the adjoining plot, which was the original position that the parties were in to begin with.

33. The Learned Arbitral Tribunal also noted the Developer's reply to the Termination Notice to indicate that the Developer had stated that he could consider independent development of the Society's property and that he had acknowledged the fact that he would not be able to carry out development on the amalgamated plot pending the legal proceedings initiated by the alleged illegal encroachers on the adjoining property. In these circumstances, the Learned Arbitral Tribunal has recorded findings that the Developer has been incapable of performing the essential terms of the contract as contracted, including the adjoining plot which was to be handed over to the Society upon development. Based on this analysis, the Learned Arbitral Tribunal was satisfied that the relief of an injunction on operation of the Termination Notice is not warranted.

34. On the facet of the strength of the *prima facie* case, the Learned Arbitral Tribunal also found that the Developer has become incapable of performing the contract, and more so when the Developer was under an obligation to obtain the Commencement Certificate for construction of the new building on the amalgamated plot within four

months of obtaining of IOD and thereafter complete the construction not later than within 42 months. Given that the development in terms of the IOD was now impossible, the Developer would need to start from scratch.

35. More importantly, the Learned Arbitral Tribunal also returned findings that the *force majeure* conditions would not have any bearing on the entitlement to seek specific performance. Even if in the course of the arbitral proceedings, the Developer could demonstrate that he was justified in not performing the contract, that would not mean that the Developer could automatically qualify for specific performance, when he himself had become incapable of performing in accordance with its terms. Another essential view of the contract as found by the Learned Arbitral Tribunal was that the Developer did not provide the detailed activity bar chart for implementation of the redevelopment to enable measurement of progress during the agreed period of 36 months with a 6 months grace period. The IOD having been obtained had been rendered useless inasmuch as no development could take place in its terms, considering that it entailed development on the amalgamated plot.

36. As regards the contentions that the Development Agreement and the Supplementary Agreement are irrevocable, the Learned Arbitral Tribunal recorded a finding that the agreement indeed creates a right to develop the property in favour of the Developer, but does not create any permanent interest in the land or the immovable property that is the subject matter of the Development Agreement. If the Developer's right to develop the property as contracted is not possible and is terminated, it would follow that such interest would also stand extinguished. Needless to say, the Learned Arbitral Tribunal had recorded the aforesaid findings, specifically in the contentions of specific performance without eroding potential consideration of damages in the course of the arbitration proceedings.

37. As regards the loss of confidence expressed by the Society, the Learned Arbitral Tribunal has taken note of the fact that the members of the Society have been struggling since 2015 for the redevelopment. The Society building is occupied by 40 families and the building is already categorised as dilapidated building under the 'C-1' category. The financial assistance being given by the new developer could also be available only to 14 out of 40 members and all the remaining members have arranged for alternate accommodation from their own funds. Since, the grant of specific relief was held to be inappropriate by the

Learned Arbitral Tribunal, the replacement of the Developer by a new developer was not interfered with by the Learned Arbitral Tribunal.

38. Taking holistic view of the matter, the Learned Arbitral Tribunal rejected the application seeking an injunction on giving effect to the Termination Notice. The Developer was directed not to obstruct the development of the land by the Society and its members through any other developer. The Learned Arbitral Tribunal kept all contentions open in connection with the claims for damages which would be considered at the stage of final hearing of the arbitral proceedings. In these circumstances, no interference was felt necessary by the Learned Arbitral Tribunal.

Analysis and Findings:

39. Having heard Learned Counsel for the parties at some length, I have examined the Impugned Order and the material on record with the assistance of the verbal and written submissions of the parties. It is made clear that all observations and comments in this judgement are made solely from the perspective of whether the Impugned Order should be interfered with as a reasonable interlocutory arrangement. Nothing contained herein is meant to be a finding on merits in a manner that it affects the final assessment of merits by the Learned Arbitral

Tribunal, which shall be guided by its own views uninfluenced by the observations made in this interlocutory appellate stage.

40. To my mind, the Impugned Order does not call for interference because it returns a reasonable and plausible outcome that cannot be termed perverse, and also protects the interests of the Developer to pursue damages, which indeed is an alternate prayer sought by the Developer in the arbitral proceedings.

41. It is noteworthy that the redevelopment has been in the making since 2015. There was already one round of litigation between the parties. Indeed initially there was a *status quo* order in the first round until the parties executed Consent Terms. The core basis of ending that impasse was the Consent Terms and the Supplementary Agreement, expanding the scope of the redevelopment to include the adjoining plot and in consideration of the same, granting a higher enhancement of redeveloped area to the members. That core basis stood undermined, according to the Developer, with the *status quo* order being passed, which he contends makes it impossible to work on the Supplementary Agreement.

42. In my opinion, one plausible view is that the stay granted to Ms. Indubai Phadtare is a stay on the demolition *by the MCGM* and not

necessarily a demolition for purposes of redevelopment, with her claims and interests being protected. If the rights claimed by her were to be protected and provided for in the redevelopment, arguably, there would be no impediment to the redevelopment. If the redevelopment were to entail recognising the interests claimed by her or providing consideration for resolving her claims, the demolition by the Developer for the redevelopment could have become feasible, with the demolition by the MGCM being irrelevant. Therefore, arguably, it is the commercial interests being pursued in relation to the adjoining plot that makes it unattractive for the Developer to implement the Supplementary Agreement. However, assuming the claims against Ms. Phadtare by the original owner of the land Mr. Ovalekar and the Developer are indeed proven to be right, what would follow is that the structure on the adjoining plot could be demolished. As things stand, according to the Developer, it would not be possible to implement the Supplementary Agreement.

43. Another facet of the matter is that the Developer invokes *force majeure*, which would indicate that the performance would be suspended without facing an allegation of breach. On the contentions relating to *force majeure*, the Learned Arbitral Tribunal has held that the invocation of *force majeure* would suspend performance but would

not be indicative of being relevant for specific performance on the terms contracted. The suspension of obligation to perform in reliance upon *force majeure* would mean that the dilapidated building would continue to stand with risk and danger to its occupants even while the parties wait for the *force majeure* conditions to cease to exist. Arguably, the suspension of performance would be of the terms as contracted and not by abandonment of the Supplementary Agreement to go back to the Development Agreement. The conduct of the parties pursuant to the Supplementary Agreement was entirely on the basis of developing the amalgamated plot. The IOD was obtained on that basis. Such IOD could not be acted upon until the *force majeure* claimed disappeared.

44. It is in this context that Mr. Kamath's contention about the enhancement being a right and not an obligation must be considered. While it is an attractive legal point for consideration, the question really is whether it makes out a ground for specific relief in conformity with the specific terms contracted terms or if it would mean having to go back to the Development Agreement as if the Supplementary Agreement were never executed, or if it would entail severing portions of the Supplementary Agreement that are affected by *force majeure* and continuing with the rest. In such a matrix, if the Learned Arbitral Tribunal has returned a view that damages would compensate the

Developer if he turns out to be correct, and the members of the Society who have been waiting since 2015 need not be forced to live in a dilapidated building hoping for an eventual resolution, such an outcome cannot be faulted.

45. If the Learned Arbitral Tribunal felt that this would be inequitable to the Society, that is reasonable. This has nothing to do with the new developer not being entitled to claim equities and solely has to do with the equities being stacked in favour of denial of injunction as opposed to injuncting the termination without any end in sight and that too when the situation can be addressed by an award of damages. Seen in this light, one way of looking at the contract is that if the Supplementary Agreement on the larger amalgamated plot of land could not be implemented, development of the Society's land alone could be persisted with provided the parties had executed a contract with this contingency being specifically articulated. The parties conducted themselves on the premise that such a contingency would never arise and once it became clear that the redevelopment of the amalgamated land was not possible, the Termination Notice was issued. Therefore, the approach of the Learned Arbitral Tribunal is commonsensical and commercially reasonable, and fair considering the history of stalled redevelopment since 2015.

46. It is indeed true that the Supplementary Agreement expanded the scope of the Development Agreement and gave the members of the Society better terms than the terms originally contracted. This was a significant departure based on a significant development – the amalgamation of the adjoining plot for purposes of the redevelopment. While the provisions of the Supplementary Agreement could indeed be read as protecting the right of the members to get the originally contracted 27% enhanced area as opposed to the 36% increased enhancement under the Supplementary Agreement. Indeed, one could read this

47. Right from September 2015, there has been no sign of the redevelopment that was envisaged by the parties, all the way, until June 20, 2022. The Society had terminated the Development Agreement by its notice dated October 24, 2019. It is that step that led to re-imagining and renegotiating the terms, and one of the fundamental terms of the newly negotiated contract was that the Society members could get a larger and better deal with an enhancement of 35% to their carpet area as opposed to 27% that had been originally contracted. The Developer contends that such changed bargain is now incapable of performance owing to *force majeure*.

48. Whether injunctive relief against the Termination Notice, in aid of final specific relief should have been granted or whether denial of an injunction on the premise that damages would adequately compensate wrongful termination will be the subject matter of the arbitral proceedings. The view taken by the Learned Arbitral Tribunal is eminently a plausible view and the Learned Arbitral Tribunal will adjudicate the contentions of the parties regarding damages. Since the members have been ready for the redevelopment to progress for nearly a decade, in my opinion, no fault can be found with the Learned Arbitral Tribunal for not interfering with the Termination Notice.

49. It is well settled law that an appeal is to be regarded as a continuation of the original proceeding, and unless there is a statutory requirement to the contrary, the powers of the appellate forum is co-extensive with the power of a forum whose adjudication is under appeal.

50. Equally, an appellate Court exercising power under Section 37 of the Act to review the exercise of discretion by an Arbitral Tribunal is well guided by the principles set out by the Supreme Court in ***Wander vs. Antox***¹ may interfere only if there is something perverse or

¹ *Wander Ltd. Vs. Antox India (P) Ltd. – 1990 (Supp) SCC 727*

implausible in the exercise of discretion. The following extract would suffice:

*14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. **In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.** An appeal against exercise of discretion is said to be an appeal on principle. **Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material.** The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. **If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.***

[Emphasis Supplied]

51. In a plethora of judgements, the principle articulated in ***Wander vs. Antox*** has been followed and reiterated. Mr. Kamat's submissions are not being dismissed out of hand. However, in my opinion, at best, they present competing plausible views, which this Court must not be in haste to adopt in substitution of the Learned

Arbitral Tribunal's plausible views. If the Learned Arbitral Tribunal's views are not arbitrary, capricious or perverse in denial of the injunction sought by the Developer, this Court ought not to change that view with its own view. For the reasons set out above, in my view, the views of the Learned Arbitral Tribunal would not fall in the category of being arbitrary, capricious or perverse. They are a reasonable expression of a credible and acceptable view, which I am not convinced to displace.

52. In these circumstances, the Impugned Order is hereby upheld with no interference. Both the Petitions are finally *disposed of* without any intervention. Needless to reiterate, I have no doubt, the final hearing of the arbitral proceedings shall be conducted with an assessment of merits that is not influenced by the observations made herein, since these observations are made solely from the perspective of considering whether to disturb the Impugned Order, and not from the perspective of pronouncing upon the merits of the matter.

53. 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.]