

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

ARBITRATION PETITION NO. 119 OF 2024
(U/s. 9 of the A & C Act, 1996)

WITH

COURT RECEIVER REPORT NO. 231 OF 2025

IN

ARBITRATION PETITION NO. 119 OF 2024

WITH

INTERIM APPLICATION (L) NO. 14679 OF 2025

WITH

INTERIM APPLICATION (L) NO. 20487 OF 2023

IN

ARBITRATION PETITION NO. 119 OF 2024

WITH

ARBITRATION APPLICATION NO. 169 OF 2024

Manmohan Kapani

...Petitioner

Versus

Kapani Resorts Pvt. Ltd. & 2 Ors.

...Respondents

Mr. Rohan Rajadhyaksha a/w. *Mr. Shlok Chandra and Ms. Pallavi Singh,*
for Petitioner.

Mr. Karl Tamboly a/w *Abhay Dhadiwal & Rishi Patodia i/b Jayakar &*
Partners & Prakhar Tandon and Shivam Wadhwa, for Respondents.

Ms. Nandini Deshpande, *1st Assistant to the Court Receiver a/w. L.V.*
Madgundi, representative of Court Receiver, present.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : June 25, 2025

Order :

1. Mr. Vaibhav Kapani, the son of Mr. Virendra Kapani is present in the Court pursuant to the directions issued on the last occasion. He has handed

over to the Petitioner a cheque with a blank name for an amount of Rs.2,50,000/- which is the costs payable pursuant to the order dated March 18, 2025 passed by this Court. The Court Receiver had scheduled physical possession of the property located at 124, Block E, Greater Kailash Part-II, New Delhi (“***Greater Kailash Property***”) and had reported to the Court on the last occasion that the premises were locked and not accessible. Since Mr. Vaibhav Kapani is present in the Court today, he is directed in person to ensure that possession is handed over to the Court Receiver on ***June 30, 2025*** at 12:00 noon. Failure to do so may attract appropriate proceedings in a contempt jurisdiction.

2. Yet again, an opportunity was afforded to the Respondents to consider if even at this stage, they would be willing to proceed to arbitration. Just to recap, on earlier occasions, the instructions given to the Learned Counsel appearing on their behalf was that the Petitioner may take his chances under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) in the Supreme Court, and they are not willing to proceed to arbitration. This was one of the factors that weighed with this Court in the exercise of its equitable jurisdiction under Section 9 of the Act.

3. Today, Mr. Tamboly, on instructions, submits that he has instructions to confirm that the Respondents would proceed to arbitration in respect of all

disputes and differences underlying this Petition. That apart, a suit initiated by the Respondents in a District Court at Manali would also stand withdrawn and would get covered by the arbitration proceedings that he is consenting to today.

4. In these circumstances, taking into account the consent of the parties to proceed to arbitration as well as to the identity of the arbitrator, an Arbitral Tribunal is hereby appointed by consent of the parties in the following terms :

A] Justice Akil Kureshi, former Chief Justice of Rajasthan and Tripura High Court and former Judge of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties covered by this proceedings;

Office Address - 617, Raheja Chambers, Nariman Point, Mumbai.

Email id – akil.kureshi@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 on which this order is uploaded on the website of this Court. 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;

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.

5. The Greater Kailash Property, of which physical possession shall be taken by the Court Receiver on ***June 30, 2025***, no later than 12:00 noon shall abide by the outcome of the arbitral proceedings. The disclosure requirements stipulated in paragraph 6 of the order dated May 7, 2025 shall also be complied with ***no later than July 7, 2025***. Such disclosure shall be provided to the Petitioner and his Advocates, as also to the Learned Arbitral Tribunal appointed hereby.

6. It is made clear, that should there be any resistance to handing over possession on the appointed date and time, the Learned Court Receiver shall be at liberty to take forcible possession, if necessary by breaking open the lock and with police assistance. A copy of this order shall be served on the local police station in whose jurisdiction, the Greater Kailash Property falls and to the Superintendent of Police under whose jurisdiction such police station falls.

7. Learned Arbitral Tribunal is requested to convene at the earliest taking into account the fact that the Petitioner is a nonagenarian and the Respondent No. 1 is a septuagenarian.

8. Should Respondent No. 2 be desirous of leveraging the Greater Kailash Property and raising funds by securing any borrowings in order to discharge the dues owed to the Petitioner, he shall be at liberty to make an application in this regard to the Learned Arbitral Tribunal.

9. Consequently, the Court Receiver's Report No. 231 of 2025 is ***disposed of***. Prayer clause (c) also granted.

10. After possession of the Greater Kailash Property is handed over, it would be open for the Respondents to make an application to the Learned

Arbitral Tribunal to substitute the security by such means, including deposit of title deeds. Should the Learned Arbitral Tribunal come to a view that any variation would be appropriate, the Arbitral Tribunal may take appropriate action on such application.

11. In view of the foregoing, nothing survives in these proceedings and same are *finally disposed of*.

12. Attendant Interim Applications pending, if any, also stand *finally disposed of*.

13. 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.]