

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

INTERIM APPLICATION (L) NO. 21078 OF 2023

IN

ARBITRATION PETITION NO. 47 OF 2023

Leena Bhavesh Shah

...Applicant/Petitioner

Versus

Akbar Mohammed Kazi

...Respondent

WITH
ARBITRATION APPLICATION NO. 318 OF 2024
WITH
ARBITRATION PETITION NO. 47 OF 2023

Adv. Bhavin Gada, a/w Aanchal Singhania a/w Dhaval Mahesh Visawadia i/b Harakhchand & Co. for the Applicant/Petitioners.

Mr. Karl Tamboly, a/w. Ms. Kirtida Chandarana i/b. Mr. Mahernosh Humranwala, Advocates for Proposed Respondent Nos. 4 & 5.

Mr. Akshay Deshmukh, a/w Mr. Sanket Kadam, Mr. Siddhesh Shirke, Mr. Sumit Chaudhary and Mr. Aniket Pawar, Advocates for Respondent Nos. 6 to 10.

Ms Anuja Tirmali, a/w Mr. Gajanan Giri i/b Ms Komal Punjabi, Advocates for Proposed Respondent Nos. 15 & 16- BMC.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 23, 2025

PC :

1. This Interim Application has been taken out seeking to implead Respondent Nos. 4 to 16 in the Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***). The arbitration agreement is contained in the Partnership Deed between the two Petitioners and Respondent Nos. 1 to 3 who are all partners in the firm. The disputes and differences between the parties relate to the affairs of the partnership firm which are essentially about the development of a property owned by the partnership firm.

2. It is the case of the Petitioners that Respondent Nos. 4 to 13 are allottees of the flats in the property that is being developed and that they have been given flats on the premise that they are project affected persons or tenants. It is the contention of Petitioner that they are not tenants or project affected persons. Larger allegations of collusion with Municipal Authorities are also levelled, and towards this end, Respondent Nos. 14 and 15, officials and office-bearers of the Municipal Corporation of Greater Mumbai (***“M.C.G.M.”***) and Respondent No. 16 which is the M.C.G.M. are also sought to be added as parties to the Section 9 Petition.

3. Without expressing any opinion on the merits of the allegations it would be necessary to permit the parties against whom allegations are made to present their case, if there is a likelihood that an

equitable measure under Section 9 may affect their interest. Therefore, purely to enable Respondent Nos. 4 to 13 to make their submissions as to whether the allegations made against them would at all need to be countered by them (in the event of the Court having to consider interim measures which may have a direct or indirect bearing on their interests), in my opinion, it would be appropriate to permit them to be impleaded.

4. Needless to say, whether an impleaded party participates in the proceedings is a matter for later, but at this stage, they ought to be given an opportunity to present their case, and therefore they would need to have notice of what is being alleged and considered, in the context of any interlocutory relief under Section 9.

5. Towards this end, Respondent Nos. 4 to 13 are permitted to be impleaded to enable them to present their say. This is only because there may be a potential likelihood that the interim measures could include a *status quo* order or a restraint on creation of further third party interests, and because it would not be possible to even consider such measures unless these individuals are given an opportunity of being heard, that the impleadment is being allowed.

6. As regards Respondent Nos. 14, 15 and 16, I do not think it is appropriate in a Section 9 Petition to embark on a fishing expedition on the conduct of the affairs by the Municipal Authorities. Should the Petitioners have grievances about conduct of work by statutory authorities, they would be at liberty to take up such proceedings as advised against such statutory authorities in accordance with law. I do

not think it necessary to drag Municipal Authorities into a private dispute between partners of a partnership firm who are developing a property. Should the need arise to bring in evidence from such officials in arbitration proceedings, it would always be open to take out appropriate proceedings under Section 27 to issue witness summons to them. In these circumstances, with the aforesaid observations, liberty to effect the amendment and implead the proposed Respondent No. 4 to 13. Such amendment may be effected within a period of four weeks from today.

7. Interim Application is allowed in terms of the schedule of amendment contained therein insofar as it relates to the Respondent Nos. 4 to 13. The Interim Application is ***finally disposed of*** in the aforesaid terms.

8. Needless to reiterate, it is made clear that the impleadment is not to be construed as an expression of an opinion on the merits or the veracity of the allegations made in the Interim Application or in the amendments sought to be made. The amendments are only in aid of enabling the persons about whom contentions are raised in pleadings, to be given a chance to appreciate the contentions and to present their case.

9. List the Section 9 Petition on ***May 07, 2025***. On that day, the Petitioners and Respondent Nos. 1 to 3 are expected to apprise the Court as to before whom they would proceed for arbitration.

10. Arbitration Application No. 318 of 2024 is a connected application under Section 11 of the Act. The same shall be tagged and listed along with this Section 9 Petition on the next date.

11. 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.]