

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**ARBITRATION PETITION NO. 271 OF 2024**

Karwari Cooperative Housing Society Ltd      ...Petitioner

Versus

M K Construction      ...Respondent

**WITH**

**ARBITRATION APPLICATION NO. 125 OF 2024**

Karwari Cooperative Housing Society Ltd      ...Applicant

Versus

M K Construction      ...Respondent

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*Mr. Rohan Savant a/w Mr. Atul Singh for Petitioner/Applicant.*

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**CORAM: SOMASEKHAR SUNDARESAN, J.**

**DATE : JANUARY 22, 2025**

**PC :**

1. Arbitration Application No. 125 of 2024 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking an appointment of arbitral tribunal to refer the disputes and differences between the parties under the Development Agreement dated April 21,

2008. The arbitration agreement is contained in clause 37 of the said agreement which, in the interest of brevity is not being extracted here but can be found at page 78 of the Application. Arbitration was invoked by a letter dated November 16, 2023, to which a reply was issued by the respondent by a letter dated November 24, 2023.

2. A bare perusal of these two documents would make it evident that there is no dispute about the arbitration agreement having been executed.
3. Learned Counsel for the Respondent presents one fundamental objection, namely, that the Development Agreement dated April 21, 2008, according to him, stood “novated”, because that agreement entails the redevelopment of only one building called “Crystal” within the premises of the Petitioner-Society, whereas another building called “Crescent” standing in the same premises of the Applicant-Society was to be added to the scope of the novated agreement.
4. According to Learned Counsel for the Respondent, a new agreement was executed, to also cover Crescent building within the relationship between the parties. He submits that, such new agreement was in fact executed, which submission

is seriously contested by the Learned Counsel for the Applicant, who submits that no supplemental agreement or “novation” instrument was ever executed.

5. Be that as it may, these are facets of merits and would need evidence to be examined, which squarely falls under the domain of the arbitral tribunal. It is now trite law that the scope of review by this Court in exercise of powers under Section 11 of the Act must be confined to ascertaining the existence of an arbitration agreement. Whether or not there is an additional coverage of one more building, and whether disputes relating to such additional coverage would have any implication for dispute resolution covered by the Application under consideration, are all matters left open for the arbitral tribunal appointed hereby to determine.
6. Consequently, I see no reason to keep this Application pending any further. While dictating this order, Learned Counsel for the parties jointly submit that it would be appropriate to appoint Mr. Amrut Joshi, a Learned Advocate of this Court as a Sole Arbitrator to adjudicate all disputes and differences between them. It is made clear that the reference to arbitration is made under the Development Agreement dated April 21, 2008, and should there be

another agreement in existence which also necessitates a reference, the parties are free to (even by consent) submit those disputes to the same arbitrator or take such other steps as advised.

7. The Parties shall approach the Learned Sole Arbitrator at a time convenient to him no later than February 4, 2025 for obtaining instructions, as to how to proceed further.
8. Arbitration Petition No.271 of 2024 is a Petition under Section 9 of the Act seeking various interlocutory reliefs pending arbitration. Since an arbitral tribunal is appointed by this order, all contents of the Section 9 Petition, namely, Arbitration Petition No.271 of 2024 would be treated as an application under Section 17 of the Act by the arbitral tribunal appointed hereby. Given the efflux of time, should the Petitioner desire to supplement or modify the contents of the Petition under Section 9, they would obviously be at liberty to do so.
9. With the aforesaid directions, both the captioned Section 9 Petition and Section 11 Application are ***finally disposed*** of.

10. 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.]**