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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 170 OF 2024
ALONGWITH
COMM. ARBITRATION PETITION NO. 308 OF 2024

Bharti Soni and Ors.

...Applicants/Petitioners

Versus

Kalpana Rajanikant Sanchala and Ors.

...Respondents

Mr. Rushabh Sheth a/w *Ms. Manisha Prajapati i/b Dhiren H. Shah*
for the Applicants/Petitioners.

Mr. Omkar Kanegaonkar a/w *Ms. Nihal Lakhan i/b Mr. Omkar*
Kanegaonkar for Respondent No.6

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 4, 2025

PC :

1. Commercial Arbitration Application No. 170 of 2024 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (*"the Act"*) while Commercial Arbitration Petition No. 308 of 2024 is the Petition under Section 9 of the Act. These proceedings relate to Development Agreement dated January 18, 2022 between Mrs. Bharti K. Soni and Swastik Builders and Developers. Petitioner No.1 is the owner of the property in question while other Petitioners are tenants of Petitioner No.1.

2. It is common ground that pursuant to the Development Agreement the buildings were demolished and development and construction commenced with three levels having been erected. However, Mr. Rajanikant Sanchala, the sole proprietor of the developer firm, namely, Swastik Builders and Developers, expired on January 15, 2024. Consequently, Respondent Nos. 1 to 5 have been brought on record as legal representatives and heirs of the late Mr. Rajanikant Sanchala.

3. In view of the Section 40 of the Act and the current state of the activity under the contract, it would be appropriate that all the disputes and differences between the parties be considered by an Arbitral Tribunal considering that an arbitration agreement has evidently been executed.

4. Respondent No.6 is the architect for the project, claims that he has no direct privity of contract with the Petitioners. Today, after the matter was argued for some time, Learned Counsel for Respondent No. 6 and the Petitioners, upon instructions from their clients, have agreed that they would proceed to arbitration before the same Arbitral Tribunal so that any disputes between them in respect of the development plan could also be resolved by the same arbitration proceedings.

5. In these circumstances, this Section 11 Application and the Petition under Section 9 of the Act are *finally disposed of* in the following terms:-

A] Mr. Rohaan Cama, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioners within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioners 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 Advocates for the Petitioners so as to enable them to file the same in the Registry

of this Court. The Registry of this Court shall retain the said Statement on the file of this Petition and a copy of the same shall be furnished by the Advocates for the Petitioners to the Respondents;

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.

6. The Section 9 Petition shall be treated as an Application under Section 17 of the Act by the Arbitral Tribunal appointed hereby. Given the efflux of time, the Petitioners shall be entitled to modify and mould the contents of the Section 9 Petition in order to make it appropriate for the current situation at hand. The Arbitral Tribunal appointed hereby is requested to consider the Section 17 Application within a period of one week from the receipt of this order and issue instructions on how to proceed further including the making of any holding arrangements that may be felt appropriate in the matter.

7. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of

the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

8. 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.]