

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

COMMERCIAL ARBITRATION APPLICATION NO.236 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO.1073 OF 2019

C.B. DevelopersPetitioner
Versus
Ketan Amrutlal Jobalia ...Respondent

WITH
INTERIM APPLICATION (L) NO.23554 OF 2023
IN
COMMERCIAL ARBITRATION PETITION NO.1073 OF 2019

Premal Timirkumar DhariaApplicant

IN THE MATTER BETWEEN

C.B. DevelopersPetitioner
Versus
Ketan Amrutlal Jobalia ...Respondent

Mr. Anil Mishra a/w Mukesh Pandey, Suraj Dubey and Chandrahas Mishra, for Applicant in ARBAPL-23554-2023.

Mr. Kunal Vaishnav a/w. Suraj Iyer, Mani Thevar i/b Ganesh & Co., for Applicant/Petitioner in CARBP-1073-2019 AND CARAP-236-2024.

Mr. Chetan Raskilal Shah, Partner of Petitioner is present.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MAY 8, 2025

PC :

1. At the request of Learned Counsel for the Petitioner as well as all the intervenors, each of the intervenors are made Respondents in this

Petition. The tenants are approved as Respondent Nos.4 to 8, and the new developer is inserted as Respondent No.3. Re-verification is dispensed with.

2. By an Order dated February 28, 2025, the Court took on board the submissions made by tenants (who sought to intervene in these proceedings) that the Petitioner, after obtaining protective reliefs as an interim measure in May 20, 2019 was doing nothing in the matter, and arbitration had not even commenced till date. It was observed that the jurisdiction under Section 9 is meant to be an interim temporary protective measure and not meant to be continued for six years with nothing further being done. The Petitioners were put to notice that they would need to apprise the Court about the status of the arbitration and their intentions in the matter.

3. Thereafter, by an order dated March 20, 2025, when it became clear that Respondent No.1 Developer was not attending to the proceedings, a direction was passed asking Mr. Ketan Jobalia, Respondent No.1 to remain present in Court either in person or virtually. The matter then came up on March 21, 2025 when Respondent No. 1 was not present. The then Advocate on record submitted that the Advocates were unable to communicate with Respondent No. 1 and sought a discharge from the matter. Since the

discharge could not be lightly allowed, the Advocates were informed that they would need to continue to remain on record and intimate Respondent No. 1 by all permissible modes to remain present on the next date.

4. Thereafter, the parties entered appearance from time to time and submitted that the Petitioner and the tenant intervenors were in active dialogue to resolve the matter. Consequently, on the last occasion, on April 28, 2025, the Petitioner and the tenants sought to submit consent terms by which the matter would be worked out. At that stage, a new Advocate on record for Respondent No. 1, having briefed a new counsel, submitted that they would need to consider the consent terms between the Petitioner and the tenants and address the Court about their interests since the consent terms entail the development being undertaken by a new developer with whom the Petitioner i.e. the owner had reached an agreement on the terms of the development, having terminated the development agreement in 2019.

5. Today, the parties were heard at length on their respective contentions on the way forward. Learned Counsel for the Petitioners submits on the basis of a list of dates tendered by him that a development agreement had been executed way back on December 5, 2007 and the developer was expected to act pursuant to the same and

develop the property. The first sanctioned plan which was compliant with the development agreement was said to have been finalized on September 28, 2012, but nothing proceeded in the matter. A conditional approval which was not consistent with the development agreement appears to have been received on February 13, 2017. Thereafter, one revision which was not consistent with the development agreement is said to have been filed on May 15, 2017 and the second revision consistent to the development agreement is said to have been filed on October 13, 2017. In December 2018, the structure on the property was demolished and the Petitioner thereafter pursued with Respondent No.1 about the status of the development. It is stated by Learned Counsel for the Petitioner that a third revision which was not consistent with the development agreement was pursued by the developer, and the plans were being modified without being in accordance with the development.

6. Be that as it may, by a notice of termination dated January 31, 2019, which is more than a decade after the development agreement was executed, the development agreement came to be terminated. Since it was apprehended that Respondent No.1 was interfering with the project despite the development agreement being terminated, this Section 9 Petition came to be filed which led to the passing of an order dated May 3, 2019, which directed maintenance of *status quo*. It is a

matter of record that Respondent No.1 did not carry that order in appeal and did not come to this Court seeking vacation or variation of that order and nothing has transpired in the matter since then.

7. The tenants had then approached this Court seeking to intervene on the premise that despite the *status quo* order and despite the demolition, they were languishing with no sight of either the redevelopment or the initiation of arbitration in aid of which the *status quo* order had been passed.

8. Today, the parties have tendered executed consent terms, which are opposed by Respondent No.1. Having perused the consent terms and taking on board the submission on behalf of the Petitioner as well as the tenants that there is nothing in it which is in conflict with any requirement of law, there is no reason not to accept the consent terms and record the same as undertakings given to the Court. Since, the development agreement dated December 5, 2007 had been terminated way back on January 31, 2019 and the developer i.e. Respondent No.1 has not taken any steps for the last six years to protect his purported interests affected by the termination, I am not inclined to examine any facet of protection for Respondent No.1 since he had adequate opportunity to resist the termination and take up appropriate

proceedings. *Prima facie*, the matter is now stale insofar as the interests of Respondent No. 1 are concerned.

9. Learned Counsel for Respondent No.1 submits that since the termination of January 31, 2019, the parties have indeed been in dialogue to resolve the disputes between them and to undertake their development and revive the development agreement. However, it is common ground that till date none of that has borne any fruit and I do not wish to comment on this facet any further, so as to not jeopardize the interests of Respondent No.1.

10. It would be open to the Petitioners and Respondent No.1 to proceed to arbitration to pursue any claims that they may have against each other, and pursue the same, as also to pursue such interlocutory measures that they may desire to pursue in front of the arbitral tribunal, bearing in mind the factual matrix reflected by the record and the respective current positions that they desire to canvass before the arbitrator.

11. In these circumstances, it would be appropriate to take on board the consent terms tendered by the Learned Counsel for both the Petitioner as well the tenants and the proposed developer and dispose of this Petition in terms of such consent terms.

12. As regards the arbitration between the Petitioner and Respondent No. 1, they may proceed to arbitration in the following terms :-

A] Mr. Nausher Kohli, 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 Applicant within a period of one week from today. The Applicant 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 and;

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.

13. 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.

14. Commercial Arbitration Application No.236 of 2024 is an application under Section 11, which would stand disposed of by the appointment of the arbitrator. It is clarified that the *status quo* order dated May 3, 2019 was a *status quo* order enuring to the benefit of the Petitioner and nothing has been agitated against it till date by Respondent No.1. Despite the foregoing, should the Respondent No.1 feel sanguine about his prospects in pursuing any interlocutory relief before the Learned Arbitrator, it is for him to pursue such measure as advised. It is totally for him to carry the burden of convincing the arbitral tribunal about the development now being pursued between the Petitioner and Respondent No.3 in the consent terms and along with the tenants being Respondent Nos. 4 to 8 who are tenants of the

Petitioner, from pursuing their proposed redevelopment. It is for him to carry the burden of explaining the same to the arbitral tribunal. Having examined the consent terms and having regard to the factual matrix I see no useful purpose in keeping this petition pending any further or in eroding the rights of the Petitioner and Respondent No. 3 to 8 in pursuing the redevelopment in terms of the consent terms. The Petitioner and Respondent No.1 may approach the arbitral tribunal at the earliest so that they may get instructions on how to proceed with the arbitration.

15. Respondent No.2 who is the Executive Engineer of the MCGM is requested to process in accordance with law, any applications that may be made pursuant to the consent terms. Needless to say, in terms of the consent terms, these parties shall be entitled to pursue redevelopment which is in accordance with all requirements of law by making such application.

16. At this stage, Learned Counsel for the tenants submits that Respondent No.1 is in arrears to the tune of more than Rs.75 Lakhs, which was payable under the development agreement. The said amount of Rs. 75 Lakhs is the amount owed, according to them as of today. Such amounts flow from the Permanent Alternate Accommodation Agreement (**"PAAA"**) executed by Respondent No.1

with each of the tenants. Needless to say the PAAA is subsidiary to the development agreement and the rights flowing from the PAAA flow from the development agreement. If the development agreement itself stood terminated in 2019, it may follow that the obligations owed under the PAAA may have to be adjusted for until 2019 and having signed consent terms with the Petitioner to pursue a new redevelopment now, it is part of the bargain that the tenants have stuck with the Petitioner. It is for the parties to commercially adjust their respective interest.

17. A query was put by the Court to the tenants and to Respondent No. 1 to see whether their disputes could be brought before the same arbitrator. While the tenants were willing to proceed to arbitration before the same arbitral tribunal, Respondent No.1 has refrained from according any such consent to proceed to arbitration *vis-a-vis* the tenants. This stop has been borne in mind in making the arrangements made in this order.

18. 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.]