

Corrected pursuant to speaking to the minutes order dated March 28, 2025.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 236 OF 2024**

M/S C B Developers ...Applicant

Versus

Ketan Amrutlal Jobalia & Anr ...Respondents

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

Mr. Kunal Vaishnav, a/w Suraj Iyer, Mani Thevar, i/b Ganesh & Co., for the Petitioner/Applicant & for Respondent No.1 in IAL/23554/2023.

Mr. Anil Mishra, a/w Mukesh Pandey, Suraj Dubey, for Applicant.

Ms. Vaishali Ugale, i/b Komal Punjabi, for Respondent No.2 in CARBP/1073/2019.

Mr. Aniket N. i/b Yogita Deshmukh, for Respondent-Developer.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 21, 2025

PC :

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1. After obtaining protective reliefs by way of “interim measures” in May 2019 in the captioned Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”), arbitration has not even been commenced. We are now in March 2025.

2. The Section 9 Petition was filed by the owner of the land in question invoking the jurisdiction of this Court pursuant to an arbitration agreement with a Developer who was meant to develop the land. Pursuant to the development proposal, the tenants in the premises vacated and they were to pay the transit rent. It is noteworthy that the Petitioner is not the Developer as is usually the case. It is inexplicable that for the past six years there is no whisper of arbitration having been commenced by the landowner.

3. Therefore, the Petitioner shall file an affidavit stating on oath, every step taken by him since obtaining protective orders under Section 9 of the Act in May 2019, as “interim protective relief”.

4. It is the case of the tenants who have taken out the captioned Interim Application that even the transit rent payable to them for having vacated their premises are in arrears since 2018. On the face of it, without getting into the intention of the parties, it would appear that the tenants made to vacate their premises without any proceedings under tenancy law, and with no sign of redevelopment of the premises in sight. Worse, there is no sign of arbitration after obtaining protective reliefs in the Section 9 Petition.

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5. The tenants have tendered a statement setting out the arrears of transit rent payable to them. The same is marked 'X' and taken on record. The Petitioner shall also communicate what steps it is willing to take considering that the Section 9 jurisdiction is an equitable jurisdiction to adjust equities and to deal with the situation.

6. On the last occasion, the Developer was asked to remain present. Learned Advocate for the Developer submits that he has been unable to communicate with the Developer and would like to be discharged. It would not be possible to lightly discharge the Developer's advocates in this manner. The Advocates shall intimate to their clients that their presence is required by the Court. Such intimation shall be communicated by every possible mode, making it clear that on the next occasion, the Court would not hesitate to issue an appropriate warrant to secure the Developer's presence. A service affidavit demonstrating the attempts to server shall be filed by Learned Advocates for the Developer. If the Developer is still found missing on the next date, it would be even more inexplicable that arbitration has not even initiated in six years. All these facts would be considered on the next date.

7. List for further consideration on ***April 8, 2025***.

8. The Affidavit as directed above shall be filed no later than April 1, 2025 and shall be served on all the parties before the next date. The tenants shall be entitled to file an affidavit with their inputs on the affidavit filed by the Petitioner no later than April 4, 2025.

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9. All the parties shall file a statement of costs incurred till date as these proceedings are proceedings involving commercial disputes.

10. Since Learned Counsel had instructions to submit on behalf of the Petitioner to submit to an order in terms of the prayers made by the tenants in the Interim Application, the Petitioner shall in such affidavit set out a proposal and manner in which he could develop the property taking it over from the Developer, in collaboration with the tenants.

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.]