
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.71 OF 2025

MS Developers ...Petitioner
Versus
Jay Co-operative Housing Society Limited & Ors. ...Respondents

WITH
COMMERCIAL ARBITRATION PETITION (L) NO.38699 OF 2024

Vasant Premji Shah HUF & Ors. ...Petitioners
Versus
Jay Co-operative Housing Society Limited & Ors. ...Respondents

Mr. Shanay Shah *i/b. Dharmesh Shah, Advocate for Petitioner and Respondent No.2 in CARBPL/38699/2024.*

Mr. Viraj Parikh *i/b. Pranjali Bhandari, Advocate for Respondent No.1 in both matters.*

Mr. Mayur Khandeparkar *a/w. Mr. Jay Sanklecha, Ms. Nikita Mishra, Ms. Taniya D'souza & Ms. Arya Gadagkar i/b. M/s. Rashmikanth and Partners, Advocates for Respondent Nos.4 to 8.*

Mr. Shreyanshi Panda, *Advocate for Respondent No.11.*

Mr. Rajiv Shah, *Respondent No.5 present in Court.*

Mr. Huzala Soni, *Partner of Petitioner present in Court.*

Rikon M., *Treasurer for Respondent No.1 present in Court.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 26, 2025

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1. An affidavit in reply tendered by Learned Counsel for the Respondents is taken on record.
2. These Section 9 Petitions relate to redevelopment of the building belonging to Jay Co-operative Housing Society Limited, Respondent No.1. The society has 74 members, of which, two flats, namely E-54 and D-43 form subject matter of those holding out from vacating the premises, as of today.
3. Respondent Nos.4 to 9 are entitled to premises in which a branch of a bank was located. They had also raised disputes, but the parties have resolved their disputes and jointly submit today that no further grievances remain on the part of Respondent Nos.4 to 9. Consequentially, Commercial Arbitration Petition (L) No.38699 of 2024, which is a Section 9 Petition filed by Respondent Nos.4 to 9 in Arbitration Petition No.71 of 2025 stands disposed of as infructuous. That Petition coupled with the Commercial Arbitration Petition No.71 of 2025 insofar as it relates to the grievances against the aforesaid Respondents, stands disposed of in terms of the settlement arrived at between the parties. A copy of the terms of settlement signed by each of the Advocates of the Petitioner as well as Respondent Nos.4 to 9 is taken on record. Respondent No.5, who is the prime driver of the

opposition by these Respondents is present in Court virtually. In the interest of brevity, the draft minutes of their settlement are not being reproduced in this order, but the same are taken on record, a copy is marked 'X' for identification, and it shall form an integral part of the record. The parties shall also e-file the same within a period of one week on the date on which this order is uploaded on the website of this Court.

4. As regards Flat No. D-43, Respondent Nos.11 and 12 are in dispute over succession to the premises in testamentary proceedings in this Court. Since the disputes are *inter se* between these Respondents, without prejudice to their *inter se* rights, the premises shall be handed over to the Petitioner and the Society for purposes of the redevelopment, on the same date by which rest of the members are expected to vacate, which is submitted to be July 15, 2025. Since neither of them lives in the Flat No.D-43 and it is currently vacant, Respondent Nos.11 and 12 shall find a mutually agreeable means to remove all their belongings, if any, by July 15, 2025. Should they fail to do so, the Learned Court Receiver is hereby empowered to take forcible possession of the said Flat No. D-43 at 11:00 am on July 15, 2025, and hand over the same to the Developer. The Learned Court Receiver shall take possession of the flat as scheduled and make an inventory of the

belongings, if any, are kept in those premises and remove whoever is found in the premises at that time.

5. The Learned Court Receiver is also empowered to execute the requisite documentation including the Permanent Alternate Accommodation Agreement (“**PAAA**”) in respect of the aforesaid flat. All amounts payable to these Respondents shall be deposited with the Registry of this Court. The amounts so deposited shall be invested in a fixed deposit which shall abide by the outcome in the testamentary proceedings pending before this Court.

6. As regards Flat No.E-54, Respondent Nos.2 and 3 have various grievances about the conduct of the Society, namely, Respondent No.1. According to them, the Society had been prohibited from executing the Development Agreement and yet the Managing Committee proceeded to execute the Development Agreement. Proceedings in respect of their grievances in this regard are underway and have gone through three rounds and another bench of this Court is currently seized of the matter.

7. Be that as it may, as of today, the parties are *ad idem* that there is no impediment in the continuance of the Development Agreement by reason of those proceedings. Since the date for vacating the premises and handing it over for purposes of redevelopment is scheduled to be

July 15, 2025, Learned Counsel for the Respondent Nos.2 and 3, upon receipt of instructions from Respondent No.3, who is also present in Court, confirms that by July 15, 2025, this flat too shall be vacated. It is made clear, that Respondent Nos.2 and 3 shall be treated *pari passu* with all other members and no discriminatory treatment shall be meted out to them on the premise that they are in litigation with the Society and its members. In view of the gracious gesture demonstrated by Respondent No.3 in Court, Learned Counsel for the Petitioner submits that Respondent Nos.2 and 3 will not be treated as non-cooperating members. It is expected that these two Respondents shall reciprocate this gesture in their conduct between now and July 15, 2025. Should they not vacate their premises by July 15, 2025, the Learned Court Receiver shall be entitled to take over possession on July 15, 2025 at 11.00 a.m. from Respondent Nos.2 and 3 of Flat No.E-54 as well, make an inventory of all the belongings contained therein and hand over possession to the Petitioner for purposes of the redevelopment.

8. Should Respondent Nos.2 and 3 not execute the PAAA and other requisite documentation, the Learned Court Receiver shall execute the same on their behalf. Payments due to Respondent Nos.2 and 3, however, be made to the bank accounts of these Respondents. If they are unable to designate a bank account or a proportion, such payments too shall be deposited with the Registry of this Court, and shall be

invested in a fixed deposit, pending further directions that may be issued.

9. The expectation of gracious conduct from Respondent Nos.2 and 3 would not prejudice their entitlements in law to deal with whatever they feel is their rightful avenue for agitating their grievances.

10. In these circumstances, these Section 9 Petitions are ***finally disposed of***. Liberty to mention should any of the parties fail to adhere to the undertakings given to the Court today, which forms the basis of disposal of these Petitions.

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.]