

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.175 OF 2025

Pranav Constructions LimitedPetitioner

Versus

Priyadarshini Co-operative Housing
Society Limited & Ors. ...Respondents

Adv. Harsh L. Behany *a/w. Ms Prachi Sanghvi i/b. HN Legal, Advocates for Petitioner.*

Mr. Yash Dhakad, *Advocate for Respondent No.1-Society.*

Mr. Rajiv Narula *i/b. Jhangiani Narula & Associates, Advocate for Respondent No.2.*

Mr. Allen Mathew *i/b. Jamshed Ansari, Advocate for Respondent Nos.3 & 4.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 20, 2025

ORAL JUDGMENT :

Context and Background:

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking certain reliefs, primarily in the nature of seeking the exercise of the Court's power to ensure that certain members vacate their premises and hand over the same to the

Petitioner (“*Developer*”) in connection with the redevelopment of the building of Respondent No. 1 (“*Society*”).

2. The Developer and the Society have executed a development agreement dated March 12, 2025 (“*Agreement*”). The Developer was selected in 2022, and the parties have eventually executed the Agreement. Overall, the Society has 23 members, who amongst them, own 16 residential flats, 6 garages, with one member owning commercial premises. Commercial activity has been carried out in some of the garages for very long. In fact, their membership in the Society is identified by their commercial names – for instance, 1) Photo Studio; and 2) PAL Dairy.

3. Respondent No2. is entitled to Garage No.6, which was last run as a travel agency. Prior to that, the business carried out was of a milk dairy. Respondent Nos.3 and 4 are entitled to commercial premises on the ground floor, which were being used as a branch of a bank and thereafter, a shop carrying out a bridal store. Respondent Nos. 5 and 6 are entitled to Flat No.8. It is common ground that these are the Respondents who are holding out. They have refused to sign the Agreement and consequently, do not have privity to the arbitration agreement contained therein.

4. Further, Respondent Nos.3 and 4 have gifted their premises to their son and the granddaughter, both adults, as long ago, as

September 21, 2023. In other words, the persons entitled to the commercial premises are these two giftees, who have admittedly not been made party to the Petition.

5. What makes the Agreement in this Petition stand out in stark contrast to other development agreements that are usually brought to Court under Section 9 of the Act is that it does not entail homogenous and *pari passu* treatment of all members. The Agreement is a structured one and proposes to treat different classes of members differently:-

- a) The owners of all residential flats are being provided an enhanced area of 39% of the current size of the flats – Respondents No. 5 and 6 fall in this category;
- b) The owners of the commercial premises (in which the bank, and now a bridal store, have been validly run) i.e. Respondent Nos.3 and 4, who are a unique class of members in their own right, are being given an enhancement of only 19% in the floor area;
- c) The owners of the garages are being given a 20% reduction in their floor area – Respondent No. 2 falls in this category.

Flat Owners:

6. Respondent Nos.5 and 6, who are flat owners, have no grievance about the redevelopment proposal *per se*. However, they have a fundamental difference about the manner of computing the area that they are entitled to, and about the stamp duty payable for the

redevelopment and their share of such duty. They insist that the Society should challenge the computation and not charge them their share since it is purported to be wrong. They are willing to vacate their flat if they are protected from the claim towards their share of the allegedly wrongly computed stamp duty.

Garages:

7. The ownership of the garage involves a controversy of its own. On behalf of the Developer and the Society, it is vehemently argued that the usage of the garage for commercial activity is *per se* illegal. Yet, it is seen from the very records of the Society appended to the Developer's Petition and submissions by Learned Counsel for the Developer (ably instructed and supported by Learned Counsel for the Society), that the very membership of the Society appears to be in the names of the businesses run in the garages, indicating that the Society accepted their nature as commercial premises for all the years of their operations.

8. Learned Counsel for Respondent No. 2 submits that not being a signatory to the Agreement, which, in any case, does not afford him *pari passu* treatment with other members but positively discriminates against him as a garage owner, the Agreement cannot be forced upon him. In fact, the garages are purportedly being given some space in the redeveloped premises and are not being told that they are totally illegal and will get nothing. However, the garages are being shrunk by 20% in

the redeveloped premises, when the flat owners affected by the redevelopment are being given an enhancement of area by 39%.

9. In other words, in the course of redevelopment, the flat owners would like to squeeze the garage owners – the flats would grow in size while the garage owners' entitlements would shrink in size. The record also shows that while the garage owners were presented with such adverse terms, the Society also gave them an offer to be bought out. A choice between shrinking in size or being bought out – essentially, a Hobson's Choice or a squeeze-out proposition.

Commercial Premises:

10. Respondent Nos.3 and 4 raise a fundamental objection. Since the premises are no longer owned by them – they had been gifted two years ago to their adult son and adult granddaughter, the Society is conscious that such giftees are new owners of interest in these commercial premises but the Developer has chosen not to make them a party and hopes to squeeze out these Respondents and somehow visit that upon the giftees.

11. Learned Counsel for the Society submits that the gift has not been recognised by the Society and the premises are in the name of these Respondents in the records of the Society. However, it is also apparent that the Society was put to notice about the gift and there is a

stand-off about changing the name. However, that there is a claimant to an ownership interest is well known to the Society, which is speaking in one voice with the Developer but they have chosen not to make such persons a party when invoking an equitable jurisdiction. Learned Counsel for these Respondents would submit that the giftees being adults, although related to them, would need to be heard before any directions can be issued in respect of premises owned by them.

Analysis and Findings:

12. We have heard Learned Counsel for the parties at length and with their assistance, examined the record and considered the detailed Notes on Submissions tendered by them. The jurisdiction under Section 9 of the Act is an equitable jurisdiction and is essentially meant to enable the Court to preserve the subject matter of the agreement containing the arbitration clause.

Conventional Approach:

13. It is indeed true that in a number of cases, an intervention under Section 9 may have the effect of obviating the need for the parties to actually proceed to dispute resolution by way of arbitration. In a number of cases, after hearing the parties in the course of the Section 9 proceedings, the parties have arrived at terms in Court and the disputes tend to get resolved, or even if they do not get resolved, the parties

reach a stage where holding out from vacating the premises is an approach that is given up by the dissenting members once their concerns are addressed in Court.

14. There is now a long line of judgments by this Court, across various benches of varying strength, making interventions in the form of directing members to vacate their premises and not hold up redevelopment. These are cases where a wider and larger collective will is sought to be protected from being undermined by (a few or even one) members, who may refuse to sign the redevelopment agreement that a the wider majority wants. Such interventions may end up going beyond protecting the subject matter of a potential dispute in an arbitration, and addressing the wider good of a vast majority of members. This is effective when all members are treated alike but just a few decide to hold up the wider contract.

15. Equally, there are judgements where such interventions under Section 9 of the Act may affect third parties (those who are not parties to the arbitration agreement). In such cases, the third parties are also given an opportunity of being heard by the Section 9 Court, so that their interests too could be factored in and considered, when the Court formulates protective measures.

Differentiation in Framework:

16. None of this can be quarreled with. Conventionally, members who hold out from signing the agreement have also been asked to vacate their premises (even with police force), when it seen that all members are given *pari passu* treatment. However, in the facts of this case, evidently, the Agreement does not treat all members in a like manner. The Respondents referred to above (other than Respondents No. 5 and 6) are not parties who are holding out from executing the Agreement despite being given the same terms and *pari passu* treatment with all other members.

17. In the instant case, upon a review of the record, it is evident that the scheme of Development Agreement, which these Respondents have not accepted, seeks to positively discriminate among the members. Indeed, the discrimination may be said to be sought among classes of members, ensuring *pari passu* treatment within the respective class of members i.e. treating all garage owners alike and all residential flat owners alike. The members with commercial premises are a class of their own – different from garages since there is no accusation of their commercial activity being illegal as is the case with garages. However, for a layered and structured bargain to be struck, there has to be a contractual bargain struck among the classes of members. This is not a simple matter of the larger collective will where all members of the collective are given the same treatment is being obstructed by one of

the members. This is a case where a wider majority of the collective is seeking to decide to impose a discriminatory bargain without the consent of those discriminated against. Such a contractual framework does not lend itself to the conventional approach that has been used in such cases.

18. The jurisdiction of this court being an equitable one, it would be most inequitable for this Court to enforce a contract that treats a class or classes of members adversely with discrimination (commercial premises get a much smaller enhancement while garage owners get a reduction), on the parties that are at the receiving end of such discrimination. The Developer is said to have been chosen in 2022 and the Agreement has been signed in 2025 – indicating that potentially the parties were negotiating in this period and having failed to strike a bargain, the Section 9 Court is being requested to force the contract on them.

Analysis of the Agreement and its Effect:

19. Effectively, no rationale or basis for the differentiation has been explained during the proceedings. Although the classification may be based on whether the members are entitled to residential premises, commercial premises and garages, evidently, the treatment of different classes of members differently, would mean these Respondents' interests do not lend themselves to being written away by the wider

collective majority community view. Therefore, if the Developer and the Society cannot convince these members to agree to differential treatment, it would not automatically follow that using the jurisdiction of the Section 9 Court, a contract they had not agreed to can be forced upon them.

20. Be that as it may, for such a differentiated and nuanced bargain to be struck, it would be fundamental that the parties negotiate with one another and arrive at a mutually agreed consensual scheme of arrangement and compromise. That consensual arrangement is simply absent in the instant case, because the differences among these members have not been negotiated and reduced to writing with consensus among the members on effecting a differentiated and layered treatment being given to different classes of members.

21. Had there been a consensus reached for this nuanced arrangement, after which one or a few of the members backtracked and violated the agreed consensus, this Court could have examined how to protect the contract from being violated. Far from a party to an arbitration agreement reneging on its contract, the Petition represents the desire to enforce a contract against a person who has chosen not to accept the discriminatory contract being forced on him.

22. In this light, requesting for interference from this Court, exercising jurisdiction under Section 9 of the Act, to use the power of

the State, with the coercive power of the Court Receiver and the executive power of the police, to force out members who are being discriminated against, and have not signed the Agreement, is not an approach that appeals to me. It must be remembered that the jurisdiction under Section 9 is not only an equitable jurisdiction but also a discretionary jurisdiction. The Court has to exercise its discretion reasonably and may arrive at a view that the larger public good is being subserved by the intervention, since that would speak to the equity jurisdiction of the Court. What is seen in the matter at hand, of course on a *prima facie* basis, is that the garage owners are being forced to shrink the entitlement to area that they currently enjoy by 20% or sell out and leave. The owners of the commercial premises are being asked to get only a 19% increase to the floor space occupied by them as opposed to the constituents of the majority class i.e. the residential unit owners getting a 39% increase to the floor space occupied by them. Such a layered scheme of arrangement and compromise is not unknown to bodies corporate, but those are statutorily implemented under stipulated procedures that take great care to protect the wider interests of the community of stakeholders, with safeguards for the vulnerable minority. The attempt to use the Section 9 jurisdiction to enforce such a bargain that the Developer and

Society have not managed to achieve for three years after the Developer was selected, is simply inappropriate to my mind.

23. I have been invited to examine case-law on the law governing garages and acknowledge the purported illegality in the use of garages for commercial purposes. However, I find that exercise to be wholly unnecessary, particularly in the context of the jurisdiction in which this Court is examining the matter. The Section 9 Court, which is meant to take measures to preserve the subject matter of arbitration, has to examine if it is equitable to exercise its jurisdiction to make an intervention of the nature sought, and not make any conclusive pronouncement upon the law and return findings that would require a deeper trial and examination of evidence. As stated earlier, the Society's own records show the garages as member with their commercial names as identity of these members. That four garage owners may accepted such a choice cannot impact the garage owner who stands up for his claims.

24. If this Court were to direct Respondent No. 2 and more importantly, Respondent No. 3 and 4 to cause their premises to be vacated, when they have consciously chosen to maintain their dignity by not accepting the discriminatory treatment proposed to be meted out to them, in my opinion, it would be an inequitable intervention and worse, forcing a bargain that they never signed up for. The

implications can indeed be that the majority can squeeze out the minority in the name of a redevelopment and get from the Section 9 Court what they could not manage to get commercially.

No Disputes under Arbitration Agreement:

25. Most importantly, the Section 9 jurisdiction is meant to protect the subject matter when the parties to the arbitration agreement have a dispute. In the instant case, there is not even an illusion or a semblance of a dispute or even a potential dispute between the parties to the arbitration agreement. The Developer and the Society have no dispute. The grievances being raised against the owners of the garage and the commercial premises are disputes with those who are not party to the arbitration agreement.

26. In fact, Learned Counsel representing the Developer and Society have extensively collaborated with each other in Court, with instructions and information being supplied by one to enable the other to make a presentation, on facts and on law. This is not to say that a Developer and a Society cannot have a joint and several right to a cause of action to pursue against third parties, but the remedy for that would not lie in a Section 9 proceeding invoking the arbitration agreement between the two non-disputing parties. Indeed, other appropriate forums including Civil Courts would be available to such parties. Merely by executing an arbitration agreement, two parties cannot

purport to get what they both want from third parties to be enforced at the hands of a Section 9 Court. ***Manifest intention*** to arbitrate is a sine qua non for invoking this jurisdiction. Far from the intention to arbitrate, the collaboration between them is manifest.

27. As regards the commercial premises, the giftees from Respondent Nos.3 and 4 are entitled to the premises and they are not even made a party to this Petition. Their enhancement is truncated to 19% and understandably even the original members had not agreed to such a skewed bargain before the gift. The Agreement was executed after the gift was made and the Society was informed.

Conclusions:

28. This is a conscious and specific scheme of arrangement and compromise, intended to operate *in rem* against multiple members and classes of members, which cannot be fitted into a framework applied to contracts entailing uniform treatment across members. To conceive and implement such a scheme of arrangement or compromise would necessitate a forum other than a Section 9 Court, which exercises jurisdiction on a temporary basis, and that too to protect the subject matter of the arbitration when there are disputes among parties to the arbitration agreement, who have a manifest intention to arbitrate.

29. One other facet stands out. There exist legal proceedings between the Society and Respondents No. 3 and 4 over the commercial premises in which a bank (and now a shop) is being run. The relevant authorities administering co-operative law have heard submissions and have reserved judgement way back in June 2022. Meanwhile, even while pronouncement of a decision is pending, a Section 9 forum has been approached to unalterably vary the respective positions of the parties involved in terms of an agreement such parties never reached. The redevelopment through the Agreement cannot be a device to circumvent and undermine the entitlements over which these parties are litigating.

30. There is a range of other objections raised by these Respondents, including complaints about the manner in which the Developer was selected. None of this needs consideration in view of what is stated above. If the Respondents are aggrieved about the quality of governance of the Society and the conduct of its office bearers, they have other forums available to them to agitate their grievances. In fact, Respondents No. 3 and 4 are actually in litigation in such forums against the Society.

31. Likewise, Respondent Nos.5 and 6 have made submissions, about manner of computing stamp duty and seeking insulation from the financial liability in consideration of which they would be willing to

vacate. These are not facets that I need to deal with in view of the decision I have arrived at, namely, that a case has not been made out for exercise of equitable discretionary jurisdiction to intervene in the manner the Court conventionally does, where all members are given *pari passu* treatment.

32. Suffice it to say when a member has consciously chosen to refrain from agreeing to a bargain that treats him differently from other members, the objection of such member to the redevelopment terms is evidently not an obtuse one. The objections are based on empirical reasonable factors such as feeling oppressed, being coerced, or being squeezed out by being presented with a Hobson's Choice.

33. Such a factual matrix does not appeal to me to exercise the jurisdiction under Section 9 of the Act to throw out such members discriminated against, in the name of an arbitration agreement between the Developer and the Society, who have no dispute at all between them, and who, in fact, appear fully aligned and acting in concert.

34. Consequently, this Petition is ***disposed of*** without any intervention being made. The parties are at liberty to litigate their grievances in such forum as advised.

35. Nothing in this judgement is meant to comment upon the quality or the merits of the cause of action asserted by any of these parties against any other party. This judgement is solely meant to convey my reasons as to why the equitable discretionary jurisdiction under Section 9 of the Act is not appropriate to have these Respondents removed from their premises by the force of the judicial and executive machinery invoked by the Developer and the Society.

36. 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.]