

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 129 OF 2025
WITH
INTERIM APPLICATION (L) NO. 16168 OF 2025
IN
ARBITRATION APPLICATION NO. 129 OF 2025
WITH
ARBITRATION APPLICATION NO. 107 OF 2025
WITH
INTERIM APPLICATION (L) NO. 16144 OF 2025
IN
ARBITRATION APPLICATION NO. 107 OF 2025
WITH
ARBITRATION APPLICATION NO. 128 OF 2025
WITH
INTERIM APPLICATION (L) NO. 2123 OF 2025
IN
ARBITRATION APPLICATION NO. 128 OF 2025
WITH
ARBITRATION APPLICATION NO. 130 OF 2025
WITH
INTERIM APPLICATION (L) NO. 16135 OF 2025
IN
ARBITRATION APPLICATION NO. 130 OF 2025
WITH
ARBITRATION APPLICATION NO. 131 OF 2025
WITH
INTERIM APPLICATION (L) NO. 16119 OF 2025
IN
ARBITRATION APPLICATION NO. 131 OF 2025

Hirani Developers

...Applicant

Versus

Nehru Nagar Samruddhi Cooperative Housing
Society Ltd. & Anr

...Respondents

Ms. Astha Tahmankar (through VC), a/w Sameer J. Chitnis & Omkar Dandekar, i/b M/s. Chitnis & Co., for the Applicant in IA/2123/25, IAL/16135/25, IAL/16119/25, IAL/16144/25, IAL/16168/25.

Mr. Sanjeev Hariakar, for Respondent No.1 in IAL/16144/25, IAL/16119/25, IAL/16135/25, IA/2123/2025, IAL/16168/25.

Ms. Gargi Warunjikar, a/w Uday Warunjikar for Respondent No.2 in all matters.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 26, 2025

ORDER :

1. These are the Applications under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) filed by the developer in a redeveloped project, who executed a Development Agreement dated December 20, 2011 (“***Agreement***”) with Respondent No.1, namely, Nehru Nagar Samruddhi Cooperative Housing Society Ltd. The disputes and differences for which a reference to arbitration is sought are essentially against individual members of the housing society in connection with the claims that the developer proposes to make against such constituents of the society.

2. A careful perusal of the Agreement as executed between the parties would show that the agreement in question is specifically only

between the developer and the society. This fact is not contested by the Applicant either. The arbitration agreement contained in the Development Agreement provides for resolution by arbitration of all disputes and differences between the parties to the Agreement. The constituents of the society, not being parties to the arbitration agreement, cannot be litigated against in arbitration proceedings.

3. However, Learned Counsel for the Applicant seeks to draw the attention of the Court to another facet of the matter. The Permanent Alternate Accommodation Agreement (“**PAAA**”) executed by each of the members against whom the developer seeks to proceed, does not contain an arbitration clause in itself, but contains the provision that states that all the terms and conditions of the Agreement shall be deemed to form part of the PAAA. On the basis of this provision, it is contended that the arbitration agreement contained in the Agreement would form an integral part of the PAAA, and therefore, the arbitration agreement, insofar as it is proposed to bind the PAAA would be invoked and therefore a reference may be made to arbitration.

4. Having heard the parties and having examined the record and based on well declared law on the subject, it would be impossible to

accept this proposal. It is now trite law that the intention of arbitrator must be explicit and must be clearly stated in writing by the parties. The provisions of Section 7 have been well interpreted by the Court from time to time, including interpreting situations where a subsequent agreement by a general reference, seeks to incorporate all the provisions of an earlier instrument, and whether thereby, an arbitration agreement could be discernible in the subsequent agreement.

5. The law is clearly laid down in NBCC (India) Limited Vs. Zillion Infraprojects Private Limited¹, and M.R. Engineers Contractors (P) Ltd. vs. Som Datt Builders Ltd.² The Supreme Court has held that a mere reference to an earlier instrument would not be adequate to demonstrate a binding commitment to arbitrate to govern the subsequent instrument – it would be necessary to demonstrate an unequivocal and firm commitment to arbitrate from the instrument in question.

6. One would have had to examine the matter in greater detail if the parties to the subsequent Agreement were identical. In the instant case, the PAAA is a tripartite agreement while the development

¹ (2024) 7 Supreme Court Cases 174

² (2009) 7 SCC 696

agreement is bipartite. Therefore, by no stretch can it be said that the third person who has executed the PAAA i.e. the constituent of the society, had privity in the first place to the arbitration agreement in the bipartite agreement. The members of the society are completely removed from the privity to the clause in the arbitration agreement and it cannot be inferred that by a mere generic reference, the arbitration agreement binding the developer and the society would also constitute an arbitration agreement committed to and binding on the members of the society. That apart, the substantive PAAA would take colour from the substantive provisions of the development agreement – which is why the PAAA provides for incorporation by reference. However, for arbitration to be firmly discerned, there would need to be a specific arbitration clause also binding the members. That being absent, the Petitioner may take other appropriate proceedings as advised, but there is no room to proceed to arbitration.

7. In these circumstances, this Application cannot be entertained and is *disposed of* without making any reference to any arbitral tribunal.

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.]