

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

ARBITRATION PETITION NO.155 OF 2024

Sanjaykumar Madhusudan Yadav
V/S

....Petitioner

Piramal Capital and Housing Finance Ltd. & Ors.

....Respondents

Mr. Satyaprakash Sharma with Ms. Vaishali Malekar i/b M/s. Global
Juris *for the Petitioner.*

Mr. Nikhil Mehta i/b M/s. KMC Legal Venture *for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

DATE : 21 JANUARY 2026.

P.C.:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) challenging Award of the learned sole Arbitrator dated 1 March 2023. By the impugned Award the Arbitral Tribunal has awarded claim of the Respondent in the sum of Rs.1,82,87,317/- alongwith interest. The learned Arbitrator has further restrained the Petitioners from alienating, selling or creating third party rights in respect of the flat in question.

2. I have heard Mr. Sharma, the learned counsel appearing for the Petitioner and Mr. Mehta, the learned counsel appearing for the Respondent No.1.

3. What is noticed by the Court at once is that the arbitration clause in the Loan Agreement conferred unilateral power on the Respondent No.1 to appoint the Arbitrator. By notice dated 24

November 2020 Respondent No.1 unilaterally appointed the learned sole Arbitrator.

4. The law with regard to the vice of unilateral appointment of Arbitrator is well settled in ***Manmohan Bhimsen Goyal & Anr. vs. Madhuban Motors Pvt. Ltd.*** (Commercial Arbitration Petition No.320 of 2024, decided on 23 December 2025). This Court has summarized the principles relating to unilateral appointment of Arbitrator in paragraph 38 of the judgment which read thus:

“38) From the above discussion, the principles which can be summarized are thus:

- (I) Every arbitration agreement providing for unilateral appointment of the sole or the presiding arbitrator is invalid. Consequently, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are nullity and cannot result into an enforceable award, being against Public Policy of India, warranting its invalidation under Section 34 of the Arbitration Act.
- (II) Unilateral appointment also includes the vice of authorizing only one of the parties to appoint the arbitrator, though that person himself may not act as arbitrator. Appointment made by one party to the dispute by calling upon the opposite party to choose only one of the named persons as arbitrator also constitutes unilateral appointment.
- (III) The waiver of applicability of Section 12(5) of the Arbitration Act requires an express agreement in writing under the Proviso. The conduct of the parties, such as participation in arbitral proceedings, filing of statement of claim/defence, filing of counterclaim, etc, is inconsequential and cannot constitute a valid waiver under the Proviso to Section 12(5) of the Act.
- (IV) Since the arbitral award made by unilaterally appointed arbitrator is a nullity, even a party appointing arbitrator is not precluded from raising objection to unilateral appointment and seeking annulment of the award. Principle of estoppel does not apply.
- (V) The objection of unilateral appointment of arbitrator can be raised at any stage of the proceedings and even while challenging the award under Section 34 or opposing enforcement under Section 36 of the Act.

- (VI) Section 12(5) of the Arbitration Act is an exception to Sections 4, 7, 12(4), 13(2) and 16(2) of the Act. Thus, there is no deemed waiver of right to object (i) by proceeding with arbitration without objection under Section 4, (ii) by exchange of statement of claim/defence under Section 7, (iii) by failure to challenge arbitration under Section 13(2) or (iv) by failure to raise objection of jurisdiction under Section 16(2) of the Arbitration Act. Therefore, the principle propounded in ***Gayatri Projects Limited V/s. Madhya Pradesh Road Development Corporation Ltd.***¹ about waiver of objection of non-existence of arbitration agreement does not apply to Section 12(5) of the Act.
- (VII) As the ineligibility goes to the root of the jurisdiction, it is not necessary for a party to raise that objection before arbitrator or even in the Petition filed under Section 34 of the Act. Sub-Sections (2)(b) and (2A) use the expression 'if court finds that..' enabling the Court to invalidate the award even in absence of objection in the Petition. “

5. In the light of the settled position of law, the Arbitral Award cannot be sustained on account of unilateral appointment of the Arbitrator. In my view therefore, the impugned Award deserves to be set aside. The learned counsel appearing for the Petitioner however objects to adoption of this Course for action submitting that the Petitioner would like to press the Petition on merits and have the arbitral Award set aside on merits. In my view however, since the vice of unilateral appointment goes to the root of the matter and renders the Award *non est*, going into the merits of the findings recorded by the learned Arbitrator, would be an exercise in futility.

6. Mr. Mehta, the learned counsel appearing for Respondent No.1 has fairly conceded to the position that the Arbitral Award can be set aside on account of unilateral appointment of Arbitrator. He has requested for constitution of another Arbitral Tribunal for adjudication of disputes and differences between the parties.

¹ 2025 SCC OnLine SC 1136

7. I accordingly, proceed to pass the following order:

A) Award dated 1 March 2023 is set aside.

B) Mr. Vishal Pattabiraman, an Advocate of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Loan Agreement (Account No.05000032939). The contact details of the Arbitrator are as under:

Office Address:- C/o. Senior Advocate Simil Purohit
504/505 Gundecha Chambers,
Nagindas Master Road,
Fort, Mumbai – 400 001.

E-mail ID:- vishalpattabharaman@gmail.com

C) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

D) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.

E) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain

appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

F) The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

G) Respondent No.1 shall be entitled to the benefit of Section 43(4) of the Arbitration Act.

8. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

9. With the above directions, the Arbitration Petition is **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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