

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 156 OF 2025**

Vishwakiran Co-operative Housing
Society Ltd.

.....PETITIONER

: VERSUS :

M/s. Super Construction Company

....RESPONDENT

Mr. Amrut Joshi with Mr. Anish Karande and Mr. Shahrukh Shaikh i/b Mr. Rohit Shetty for the Petitioner.

Mr. Aliabbas Delhiwala with Ms. Usha Singh and Mr. Pritesh Haridas Bodekar i/b Vyas & Bhalwal, for the Respondent.

**CORAM : SANDEEP V. MARNE, J.
JUDG. RESD. ON : 7 MARCH 2026.
JUDG. PRON. ON : 17 MARCH 2026**

JUDGMENT :

1) This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings. By the petition, the Petitioner-Society seeks to restrain the Respondent from obstructing the Society from carrying out development work of its building by appointing new developer and from creating any third-party rights in respect of the development rights conferred on the Respondent vide Agreement for Redevelopment dated 2 February 2016.

2) Petitioner is a cooperative housing society and owner of land plot bearing Survey No. 341, CTS No. 629, Plot No. 1248, Sharda Devi Marg, Government Colony, Bandra East, Mumbai - 400051 and building constructed thereon. The building of the society comprises of A-wing of 20 flats, B-wing of 20 flats and C-wing of 5 flats. The total members of the society are 45. The Occupation Certificate in respect of the buildings was issued on 29 March 1990. Since the buildings were more than 30 years old and did not have any lift facility, the members decided to go for redevelopment thereof. A resolution was adopted in Special General Body Meeting held on 3 August 2014. The Respondent was selected by the Society for carrying out redevelopment of its buildings. Accordingly, registered Development Agreement dated 2 February 2016 was executed between the Petitioner-Society and Respondent-Developer. Out of the agreed hardship compensation of Rs.4,60,00,000/-, Respondent-developer paid 20% amount of Rs.92,00,000/- on 25 April 2016. Since the Respondent-Developer did not commence redevelopment process, a Show Cause Notice dated 25 January 2018 was issued by the Petitioner-Society. Petitioner terminated the Development Agreement by notice dated 30 May 2018. Respondent invoked arbitration clause and thereafter filed proceedings under Section 11 of the Arbitration Act bearing Arbitration Application No. 285 of 2019. Respondent also filed Petition No. 915 of 2019 under Section 9. Consent terms were entered into between the parties and they executed Supplementary Redevelopment Agreement dated 18 December 2019, under which Respondent undertook to carry out re-measurement of the entire plot within 30 days, repairs of the building

within 2 months, to secure NOC from civil aviation authorities and to secure all necessary permissions including from the planning authority and Collector within 12 months. Respondents also undertook to complete the redevelopment process within a period of 24 months with a grace period of 6 months. Respondent also agreed to pay transit rent at the rate of Rs.130 per sq.ft. to the members. Accordingly, consent terms were filed and the petition was disposed of by order dated 18 December 2019.

3) According to the Petitioner-Society, Respondent has not moved even an inch in the direction of redevelopment process after execution of consent terms / supplementary redevelopment agreement dated 18 December 2019. After waiting for sufficient time, the Petitioner-Society has terminated the Development Agreement and Supplementary Redevelopment Agreement by notice dated 18 May 2021. Respondent replied to the Termination Notice on 27 July 2021. Petitioner-Society wants to appoint another developer. However, it feels that new developer would not take the risk of entering into the plot on account of Respondent seeking to assert its right out of the Redevelopment Agreement. Petitioner-Society also apprehends that the Respondent may create third-party rights in the project by bringing some other developer without the consent of the Society. Accordingly, Society has filed the present Petition under Section 9 of Arbitration Act seeking following interim measures:

(a) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass a temporary / mandatory order and injunction restraining the Respondent and/or their

representatives, officers, servants, agents or any person or persons claiming through or under them from in any manner, meddling and/or interfering with and/or causing any obstruction in any manner whatsoever, to the Petitioners appointing any New Developers and the new Developers carrying on with the said redevelopment work at site and it is prayed accordingly.

(b) That pending the hearing and final disposal of the arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass a mandatory order and injunction directing the Respondent to hand over to the Petitioners, in original, each and every document relating to the redevelopment process of the said Property including but not limited to Letter/s from MCGM, Plans, sanctioned plans, approvals, permissions (applied for and received), Power of Attorney, Development Agreement dated 02-02-2016 as also the Supplemental Agreement dated 18-12-2019, and all such other documents which are in their (Respondents') possession and it is prayed accordingly.

(c) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass an Order permitting the Petitioners to register the fresh Re-Development Agreement with any New Developer and have it duly registered with the Sub-Registrar of Assurances, notwithstanding the Re-Development Agreement dated 02-02-2016 which is presently registered and it is prayed accordingly.

(a-1) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to restrain the Respondent, its partners, representatives, officers, servants, agents, and/or all or any persons claiming through or under them by an order of temporary injunction from creating any third party rights and/or encumbrance of any kind whatsoever in respect of the said Plot i.e. Survey No.341, CTS No. 629, Plot No. 1248, Sharda Devi Marg, Government Colony, Bandra (East), Mumbai - 400 051 measuring 1874 sq. metres, in any manner whatsoever.

(d) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass a mandatory order and injunction directing the Respondent to obtain and hand over to the Petitioner if any No-objection Certificates (NOC's) from the Structural Engineer(s), Architect(s) & Consultants), MEP Consultant(s), Project Management Consultant(s), Licensed Plumbing Contractor(s), Electrical Contractor(s), Painting and Fabrication Contractor(s) and such other consultants/contractors/agencies employed by the Respondent in respect of the said Property, if so appointed by the Respondent Developers for the said Project.

(e) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to order and direct all the concerned authorities including the MCGM and MHADA not to insist on any

NOC(s) from the Respondent Developers and/or from any of the persons, as a condition/pre-requisite for processing any application for development, permission, NOC that the Petitioners may make itself or through its Constituted Attorney or through their New Developers and it is prayed accordingly.

(f) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass an Order directing the Respondent to render all co-operation and sign all documents/papers/forms/deeds as may be required by the Petitioner or their newly appointed Developers in the redevelopment process and it is prayed accordingly.

(g) That ad-interim interim reliefs in terms of prayer clause (a) to (f) above be granted.

(h) That cost of the present Petition be provided for.

(i) That such other and further reliefs as to this Hon'ble Court may deem fit and proper in the facts of the present case may also be granted.

4) The Petition is opposed by Respondent by filing Affidavit in Reply.

5) Mr. Joshi, the learned counsel appearing for the Petitioner submits that grant of interim measures under Section 9 of Arbitration Act are necessary for the purpose of enabling the Society to go for redevelopment through another developer. He submits that during last 10 long years, Respondent has done virtually nothing at the site. That the building of Society is in dangerous and dilapidated condition and requires immediate demolition. He submits that Respondent has already been given one chance by extending time limits for development by entering into Consent Terms and Supplementary Redevelopment Agreement dated 18 December 2019. That even after Consent Terms, Respondent has done absolutely nothing at the site. That the members of Society cannot be

made to wait indefinitely and other developers are not even willing to discuss the proposal with the Society on account of Respondent asserting its rights despite termination of Development Agreement vide notice dated 18 May 2021.

6) Mr. Joshi further submits that the stand taken by Respondents in the Affidavit in Reply about Consent Terms and Supplementary Redevelopment Agreement constituting novation of original contract is totally misleading. That the Supplementary Redevelopment Agreement is executed only to supplement the terms and conditions of the original Development Agreement. That therefore there is a valid arbitration agreement between the parties even after the execution of the Supplementary Redevelopment Agreement. He relies on judgment in **Pushpa Devi Bhagat vs. Rajinder Singh and Ors.**¹ in support of his contention that Consent Terms ultimately represent private contract between the parties with superimposition of seal of the Court. That therefore mere entering into consent terms does not mean that the stipulations of the original Redevelopment Agreement of 2016 get obliterated. He submits that the Supplementary Redevelopment Agreement cannot be enforced on its own and in absence of the original Redevelopment Agreement. That therefore arbitration clause contained in original Redevelopment Agreement would continue to remain binding on the parties notwithstanding execution of Supplementary Redevelopment Agreement or the Consent Terms. In support, he relies on judgment of the Apex Court in **Chrisomar Corporation vs. MJR Steels**

1 (2006) 5 SCC 566

Private Limited and Anr². In support of contention that the Redevelopment Agreement of 2016 is the principal document between the parties which is inseparably intertwined with the Supplementary Redevelopment Agreement. Mr. Joshi relies on judgment of this Court in **Mahindra Mangilalji Jain vs. M/s. Radha Construction Co and Ors.**³ He also relies on judgment of this Court in **Om Swayambhu Siddhivinayak vs. Harischandra Dinkar Gaikwad and Ors.**⁴

7) Mr. Joshi further submits that this Court has repeatedly ensured that the redevelopment process is not delayed on account of presence of earlier developer at the site. In support of his contentions, he relies on the following judgments:

1. **Chaurangi Builders & Developers Pvt. Ltd. vs. Maharashtra Airport Development Company Ltd.**⁵

2. **Gopi Gorwani vs. Ideal Co-operative Housing Society Ltd. And Ors.**⁶

3. **Heritage Lifestyle and Developers Ltd. vs. Cool Breeze Co-operative Housing Society Ltd. And Ors.**⁷

4. **New Aarti Co-operative Housing Society Ltd. vs. Kabra Estate & Investment Consultants**⁸

2 (2018) 16 SCC 117

3 Commercial Arbitration Application (L) No. 12427 of 2025 decided on 4 March 2026

4 2025 SCC OnLine Bom 4906

5 2013 SCC OnLine Bom 1530

6 2013 SCC OnLine Bom 1967

7 2014 (3) Mh.L.J. 376

8 2015 SCC OnLine Bom 5929

5. Jal Ratan Deep Co-operative Housing Society Ltd. Vs Kumar Builders Mumbai Realty Private Ltd.⁹

6. Goregaon Sukhnivas Co-operative Housing Society Ltd. vs. Sukushal Builders & Developers and Ors.¹⁰

7. SSD Escatics Pvt. Ltd. Vs Goregaon Pearl Co-operative Housing Society Ltd.¹¹

8. Karan Group Builders and Developers and Ors. Vs. Dindoshi Vrindavan CHS Ltd. And Ors.¹²

9. Solaris Developers Pvt. Ltd. vs. Eversmile Co-op. Housing Society Ltd.¹³

10. Asha Sonu Samjiskar and Ors. vs. Sadguru Enterprises¹⁴

11. Rajawadi Arunodaya Co-operative Housing Society Ltd. vs. Value Projects Pvt. Ltd.¹⁵

12. Swashray Co-op Housing Society Ltd. And Ors. vs. Shanti Enterprises¹⁶

13. ISON Builders LLP vs. Om Sai Ram Cooperative Housing Society (proposed) and Ors.¹⁷

8) Mr. Joshi would accordingly pray for grant of interim measures against the Respondent-Developer.

9 2015 SCC OnLine Bom 5928

10 2016 SCC OnLine Bom 3366

11 Commercial Arbitration Petition (L) No. 1072 of 2018 decided on 14 December 2018

12 2019 (4) ABR 673

13 2019 SCC OnLine Bom 13335

14 Commercial Arbitration Petition (L) No. 674 of 2019 decided on 24 September 2019.

15 2021 SCC OnLine Bom 9572

16 2023:BHC-OS:13075

17 2026 SCC OnLine Bom 319

9) The Petition is opposed by Mr. Delhiwala, the learned counsel appearing for the Respondent. He submits that no interim measures can be made in the present Petition in the light of absence of any arbitration agreement between the parties. That the arbitration agreement contained in the original agreement of redevelopment dated 2 February 2016 stands replaced by the Consent Terms filed before the Court. That the dispute resolution mechanism agreed between the parties got altered on account of Consent Terms passed by the Court. That the only remedy for the Petitioner is to seek enforcement of Consent Terms. That the arbitration agreement has ceased to exist upon execution of Consent Terms. Now if there are any allegations of breach, breach can only be of Consent Terms. That therefore arbitration is no longer a remedy available to the Petitioner-Society. Since arbitration itself cannot be sought, there is no question of seeking any interim measures against the Respondent.

10) Mr. Delhiwala further submits that once the consent terms are entered, the original cause of action gets subsumed and all rights of parties get governed by the consent terms. In support of his contention, he relies on judgment of Apex Court in Byram Pestonji Gariwala vs. Union Bank of India and Ors.¹⁸, Rama Narang vs. Ramesh Narang and Anr.¹⁹ and Som Dev and Ors. vs. Rati Ram and Anr.²⁰ He also relies on judgment of Delhi High Court United India Assurance Company Limited

18 (1992) 1 SCC 31

19 (2006) 11 SCC 114

20 (2006) 10 SCC 788

vs. Competition Commission of India²¹. He also relies on judgment of Apex Court in **Bhanu Kumar Jain vs. Archana Kumar and Anr²²**.

11) Mr. Delhiwala further submits that Petitioner-Society has committed fundamental breaches of both, the Development Agreement as well as the Supplementary Redevelopment Agreement and is not entitled to seek any interim measures. That the Respondent has always performed the contractual obligations and is unable to proceed ahead with redevelopment on account of non-cooperation by Petitioner-Society. He relies on contractual covenant under which Society was supposed to execute the Power of Attorney, which has not been executed. He submits that without Power of Attorney from Society, it is not possible for Respondent-Developer to take any steps towards redevelopment. He submits that Respondent in fact has several claims against the Petitioner-Society. That Respondent has incurred huge expenditure in the Project and Petitioner-Society cannot be permitted to bring a new developer prejudicing the rights of the Respondent.

12) Rival contentions of the parties now fall for my consideration.

13) This is a typical dispute between a cooperative housing society and developer where there is an allegation of delay in execution of redevelopment project of the society by the developer. The society

21 LPA 724/2019 decided on 1 November 2025

22 (2005) 1 SCC 787

intends to carry out redevelopment through another developer and is finding it difficult to do so on account of assertion of rights in the project by the Respondent-Developer. While the law on the subject of rights of developer to earn profits out of redevelopment project remaining subservient to right of members of society to have their homes rebuilt is reiterated in several judgments of this Court, a slight twist is added in the present case by the Respondent on account of execution of Consent Terms and Supplementary Redevelopment Agreement between the parties on 18 December 2019. Respondent has raised a plea that the arbitration agreement in original development agreement of 2016 stood novated and substituted by new dispute resolution mechanism in the Consent Terms. It is therefore contended that in absence of arbitration agreement between the parties, interim measures under Section 9 cannot be made.

14) Petitioner-Society and Respondent-Developer entered into registered Agreement of Redevelopment dated 2 February 2016. Society alleges that the Developer failed to act in terms of Development Agreement and beyond paying a sum of Rs. 92,00,000/- to the Society towards hardship compensation, no steps are taken by the Developer for completion of the project. The Society accordingly terminated the Development Agreement by letter dated 30 May 2018. In proceedings filed under Sections 9 and 11 of the Arbitration Act, parties entered into consent terms on 18 December 2019. They executed Consent Terms as well as Supplementary Redevelopment Agreement under which the timelines for taking various steps were altered. Respondent agreed to

complete construction of the building within a period of 24 months with grace period of 6 months. Thus, under the Supplementary Redevelopment Agreement, Respondent had time of 30 months to complete reconstruction of society's building. By now, a period of more than 6 long years has expired from date of execution of Supplementary Redevelopment Agreement and it is not disputed that building of Society has not even been demolished by Respondent-Developer. The reason for not undertaking the demolition of building is more than obvious. If flats are vacated and the building is demolished, the developer becomes liable to pay transit rent and therefore, developer usually does not seek vacation of flats or go for demolition of building unless he is sure of capability and permissibility of undertaking the construction of new building.

15) Petitioner-Society has placed on record the photographs of the building at Exhibit-A to the Petition which depict sorry state of affairs. The building appears to be in a grossly dilapidated and dangerous condition with several senior citizen members residing in their respective flats in extremely dangerous conditions. Municipal Corporation had issued notice dated 10 April 2019 to the Society in respect of its dangerous and dilapidated condition. There is structural report of 2017 on record which again depicts the dangerous condition of the building. However, despite passage of more than 10 long years, the Respondent-Developer has failed to take any steps for demolition of existing building and construction of the new building.

16) So far as the twist of consent terms sought to be added by Respondent-Developer is concerned, the same is without any substance. Mr. Delhiwala himself repeatedly admitted during course of submissions that contractual obligations arising between the parties out of Redevelopment Agreement dated 2 February 2016 continue to operate notwithstanding execution of Consent Terms and Supplementary Redevelopment Agreement dated 18 December 2019. However, he raises a curious plea of arbitration clause in Redevelopment Agreement getting obliterated on account of execution of Consent Terms. Usually, cases involve the eventuality of expiry, termination etc. of the principal underlying contract, in which case arbitration clause survives. In the present case, what Mr. Delhiwala has canvassed before me is an impossible proposition that the principal contract survives even after execution of the consent terms and supplementary agreement, but arbitration clause contained in the principal agreement has come to end. The submission, in my view, deserves outright rejection. Parties have not executed any document evincing an agreement for non-operation of the arbitration clause in the 2016 Redevelopment Agreement.

17) Apart from the fact that the Respondent itself treats the Redevelopment Agreement as subsisting and binding, it is also seen that the Supplementary Agreement cannot be performed on its own without the aid of the Redevelopment Agreement. In ***Chrisomar Corporation*** (supra), Hon'ble Apex Court has considered the provisions of Sections 62 and 63 of Indian Contract Act, 1872 and has held that it is only when parties agree to substitute a completely different contract for the earlier

contract or rescind the original contract, performance of original contract comes to an end. The Apex Court referred to the judgment of Calcutta High Court in **Juggilal Kamplapat vs. N.V. Internationale Crediet-En-Handels Vereeniging 'Rotterdam'**²³ in its judgment. It is held that if new contract does not have independent contractual force and cannot be enforced without the aid of principal contract, the terms and conditions of original contract would continue to be the part of modified contract, except to the extent of inconsistency. The Apex Court held in paras-34 to 39 of the judgment in **Chrisomar Corporation** as under :

34. Sections 62 and 63 of the Contract Act read as follows:

“62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

63. Promisee may dispense with or remit performance of promise.—Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.”

35. It is the appellant's case that Section 63 of the Contract Act is attracted to the facts of the present case whereas it is the respondent's case that Section 62 is so attracted, the result being that the original agreement is substituted by a fresh agreement.

36. The respondent's case is that Section 62 applies, since the original contract has been “altered”. This being the case, the original contract need not be performed.

37. It is clear that where parties to a contract agree to substitute a completely different contract for the first, or to rescind a contract, the performance under the original contract and/or rescinded contract comes to an end. When parties to a contract “alter” a contract, the question that has to be answered is as to whether the original contract is altered in such a manner that performance under it is at an end.

38. In *Juggilal Kamplapat v. N.V. Internationale Crediet-En-Handels Vereeniging 'Rotterdam'*, the original contract dated 10-8-1950 contained an arbitration

23 1952 SCC OnLine Cal 250

clause. In para 11 of the judgment, it was found as a fact that the original contract was modified in certain material particulars. Despite this, it was found that since the modifications do not go to the root of the original contract and do not change its essential character, the facts do not warrant the inference that the parties intended to rescind the original contract. The High Court held: (SCC OnLine Cal paras 14-15)

“14. In the present case the modifications do not go to the very root of the first contract and do not change its essential character. The facts do not warrant the inference that the parties intended to rescind the contract, dated 10-8-1950. The April arrangement was entered into in response to pressing demands for delivery under that contract and with a view to implement it. The arrangement has no independent contractual force, no meaning and content separately from and independently of the original contract.

15. The effect of the alterations or modifications is that there is a new arrangement; in the language of Viscount Haldane in *Morris v. Baron and Co.* [*Morris v. Baron and Co.*, 1918 AC 1 (HL)] : (AC p. 17)

‘a new contract containing as an entirety the old terms together with and as modified by the new terms incorporated.’

The modifications are read into and become part and parcel of the original contract. The original terms also continue to be part of the contract and are not rescinded and/or superseded except insofar as they are inconsistent with the modifications. Those of the original terms which cannot make sense when read with the alterations must be rejected. In my view the arbitration clause in this case is in no way inconsistent with the subsequent modifications and continues to subsist.”

39. We approve of the said judgment as laying down the correct law on the expression “alter” in Section 62 of the Contract Act. In order that a contract that is altered in material particulars fall under Section 62, it must be clear that the alteration must go to the very root of the original contract and change its essential character, so that the modified contract must be read as doing away with the original contract. If the modified contract has no independent contractual force, in that it has no meaning and content separately from and independently of the original contract, it is clear that there is no new contract which comes into being. The original terms continue to be part of the modified contract except to the extent that they are inconsistent with the modifications made.

18) In *Mahindra Mangilalji Jain* (supra), this Court has considered the issue of giving effect to the arbitration clause contained in

the principal instrument for the purpose of resolution of disputes arising out of Memorandum of Understanding, not containing arbitration agreement. This Court held in para 39 as under:

(39) In my view, the ratio of judgments in *Ameet Lalchand Shah* [(2018) 15 SCC 678] and *Cox and Kings Ltd.* [(2024) 4 SCC 1] (supra) would squarely apply in present case where multiple documents are executed by parties to give effect to a composite transaction. The MOU is inseparably intertwined with Retirement Deed and does not have its own legs to stand on. The MOU therefore cannot be separated from the Deed of Retirement, notwithstanding the 'entire agreement' clause. The MOU, on its own, does not seek to execute any separate transaction and only provides for a methodology for payment of consideration under the MOU. In my view therefore, reference to arbitration can be made by invoking arbitration clause in the Deed of Retirement, even though the Petitioner seeks to enforce the contractual obligations flowing out of the MOU.

19) In the present case also, the Supplementary Redevelopment Agreement cannot be enforced on its own. It has no legs to stand on its own. Performance of Supplementary Redevelopment Agreement cannot be ensured without the aid of the 2016 Redevelopment Agreement. This position is admitted by Mr. Delhiwala, who himself has repeatedly contended that the Society has committed breach of contractual stipulations of 2016 Redevelopment Agreement. Once it is admitted that the original redevelopment agreement continues to survive even after execution of supplementary agreement, it is incomprehensible that arbitration clause in original redevelopment agreement would come to an end.

20) Even execution of consent terms would effect no change in respect of enforceability of redevelopment agreement. It is well-settled

position that consent terms are nothing but private agreement between parties with seal of court and reliance in this regard by Mr. Joshi on judgment of the Apex Court in ***Pushpa Devi Bhagat*** (supra) is apposite. The baseless contention is raised on behalf of Respondent that dispute resolution mechanism agreed in redevelopment agreement has come to an end on account of execution of consent terms. By executing Consent Terms, parties took on record the Supplementary Redevelopment Agreement, which merely supplements the contractual obligations provided in the original redevelopment agreement. In fact, order dated 18 December 2019 categorically records that Supplementary Redevelopment Agreement is not in supersession but mere modification of the previous development agreement. This is clear from clause 5 of the Supplementary Redevelopment Agreement, which reads thus :

5. Parties agree that the supplementary document is not in supersession of but is in agreed modification of and addition to the previous Development Agreement. So noted.

21) Even the consent terms confirm that Redevelopment Agreement dated 2 February 2016 shall remain valid and subsisting between the parties and that Supplementary Redevelopment Agreement was executed only for the purpose of supplementing the terms and conditions in addition to the Redevelopment Agreement. In my view therefore, mere execution of consent terms between the parties cannot be a reason for holding that the agreed dispute resolution mechanism has come to an end and that only remedy available to the Petitioner-Society is to seek enforcement of the consent terms. Reliance by Mr. Delhiwala on

judgments in *Byram Pestonji Gariwala, Rama Narang, and Som Dev* (supra) in this regard is inapposite.

22) I am therefore of the view that the arbitration clause in the Agreement for Redevelopment dated 2 February 2016 continues to subsist between the parties and therefore Petitioner's prayers for grant of interim measures before commencement of arbitral proceedings can be considered in Petition filed under Section 9 of the Arbitration Act.

23) So far as merits of the dispute are concerned, it is seen that the Respondent has done precious little during last 10 long years towards redevelopment of Society's building. The members of Society continue to remain languished in old and dilapidated homes. Despite owning the land and the building, Society is prevented from reconstructing the building merely because Agreement for Redevelopment and Supplementary Agreement is executed with the Respondent-Developer. Time has come to permit the Society to carry out redevelopment through another developer. This Court has repeatedly taken a view that when rights of the members of the society to have their homes rebuilt are pitted against the right of the developer to earn profits through redevelopment project, the former must prevail over the latter. Reference in this regard can be made to the judgment of this Court in *Huges Real Estate Developers LLP vs. Shrinkage Adarsh Co-operative Housing Society Limited and Anr.*²⁴ Even otherwise, there are several judgments of this Court wherein the right of the society to appoint new developer for completing the

24 Commercial Appeal No.45 of 2025 decided on 19 August 2025

redevelopment work has been repeatedly upheld leaving open the remedy of arbitration for earlier developer to claim damages. It is repeatedly held that a defaulting developer cannot restrain the society from proceeding ahead with the redevelopment through another developer and that developer's remedy lies in claiming damages in arbitration. The investments made by the earlier developer cannot be a ground for continuing him in respect of the project, which is grossly delayed with no hope of its completion. Mr. Joshi has rightly relied on judgments of this Court in *Chaurangi Builders, Gopi Gorwani, Heritage Lifestyle, New Aarti Co-operative Housing Society Ltd., Jal Ratan Deep Co-operative Housing Society Ltd., Goregaon Sukhnivas Co-operative Housing Society Ltd. SSD Escatics Pvt. Ltd., Karan Group Builders and Developers, Solaris Developers Pvt. Ltd., Asha Sonu Samjiskar, Rajawadi Arunodaya Co-operative Housing Society Ltd., Swashray Co-op Housing Society Ltd.* and *ISON Builders LLP* (supra). Since the principles are well settled, it is not necessary to discuss the ratio of each of the judgment relied upon by Mr. Joshi.

24) In the present case, what Respondent is doing is to gamble in the Project at the cost of lives of the society members. What is at stakes for the Respondent-developer is an insignificant amount he has invested and the opportunity to make profits in the project. But what is at stake for the society members is of far greater significance and would outweigh the stakes of the developer. Redevelopment project cannot be treated as a 'property' capable of being hoarded and sold to another developer by earning profits.

25) In the present case, the Court is convinced that the Petitioner must be permitted to appoint new developer for completing the work of demolishing the existing building and reconstructing the same. Respondent has been given sufficient time by the Society. If in past 10 years, Respondent has not been able to secure development permission from planning authority or even to demolish the existing building by undertaking the obligation of paying transit rent to the members, absence of enthusiasm, interest and capacity to complete the project is writ large. This Court is also conscious of the position that the second termination of Respondent's appointment is effected by the Petitioner-Society on 18 May 2021. Substantial time has elapsed thereafter. However, in a redevelopment project, there are often unique circumstances where Municipal Corporation does not permit society or new developer to submit plans without securing NOC from architect of earlier developer. Thus, there are three major factors why this Court considers it necessary to make interim measures even before commencement of arbitral proceedings. *Firstly*, the society building is in dangerous and dilapidated condition. Any mishap would result in injury or loss of human life. It is therefore necessary that immediate steps are taken for appointment of new developer, particularly before onset of monsoon so that there are no casualties on account of happening of any untoward incident. *Secondly*, the Society has started scouting for other developer and no developer is showing interest on account of Respondent-Developer asserting rights in the project. In such circumstances, grant of interim measures would enable the Society to negotiate with the new developers, who would feel

confident for taking over the contractual obligations once they are satisfied that the Respondent cannot obstruct the redevelopment process. Thirdly the redevelopment of building of society is the subject matter of arbitration. It happens quite often that developer finding it financially difficult to complete the project, executes an arrangement with another developer on a profit-sharing basis. If urgent interim measures are not made, the Respondent-Developer is likely to create third-party rights in respect of the project. This is yet another reason why interim measures are required to be made to preserve the subject matter of arbitration. In my view therefore, a case is made out for grant of interim measures in the Petition.

26) Respondent's claim for damages can always be adjudicated by the Arbitral Tribunal. However, redevelopment work of the Society need not be halted till Respondent gets its claim against the Society adjudicated through arbitration. Petitioner society has intention to arbitrate with the Respondent. Therefore steps need to be taken for commencement of the arbitral proceedings within 90 days as per provisions of Section 9(2) of the Arbitration Act.

27) I proceed to pass the following order:

- a. Pending the arbitration proceedings and till making of the final award, there shall be interim measures in favour of the Petitioner and against the Respondent in terms of prayer clauses (a), (b), (c), (a1), (d) and (e) which read thus:

(a) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass a temporary / mandatory order and injunction restraining the Respondent and/or their representatives, officers, servants, agents or any person or persons claiming through or under them from in any manner, meddling and/or interfering with and/or causing any obstruction in any manner whatsoever, to the Petitioners appointing any New Developers and the new Developers carrying on with the said redevelopment work at site and it is prayed accordingly.

(b) That pending the hearing and final disposal of the arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass a mandatory order and injunction directing the Respondent to hand over to the Petitioners, in original, each and every document relating to the redevelopment process of the said Property including but not limited to Letter/s from MCGM, Plans, sanctioned plans, approvals, permissions (applied for and received), Power of Attorney, Development Agreement dated 02-02-2016 as also the Supplemental Agreement dated 18-12-2019, and all such other documents which are in their (Respondents') possession and it is prayed accordingly.

(c) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to pass an Order permitting the Petitioners to register the fresh Re-Development Agreement with any New Developer and have it duly registered with the Sub-Registrar of Assurances, notwithstanding the Re-Development Agreement dated 02-02-2016 which is presently registered and it is prayed accordingly.

(a-1) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to restrain the Respondent, its partners, representatives, officers, servants, agents, and/or all or any persons claiming through or under them by an order of temporary injunction from creating any third party rights and/or encumbrance of any kind whatsoever in respect of the said Plot i.e. Survey No.341, CTS No. 629, Plot No. 1248, Sharda Devi Marg, Government Colony, Bandra (East), Mumbai - 400 051 measuring 1874 sq. metres, in any manner whatsoever.

(d) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court

be pleased to pass a mandatory order and injunction directing the Respondent to obtain and hand over to the Petitioner if any No-objection Certificates (NOC's) from the Structural Engineer(s), Architect(s) & Consultants), MEP Consultant(s), Project Management Consultant(s), Licensed Plumbing Contractor(s), Electrical Contractor(s), Painting and Fabrication Contractor(s) and such other consultants/contractors/ agencies employed by the Respondent in respect of the said Property, if so appointed by the Respondent Developers for the suit Project.

(e) That pending the hearing and final disposal of the Arbitral proceedings and till execution of the Award, this Hon'ble Court be pleased to order and direct all the concerned authorities including the MCGM and MHADA not to insist on any NOC(s) from the Respondent Developers and/or from any of the persons, as a condition/pre-requisite for processing any application for development, permission, NOC that the Petitioners may make itself or through its Constituted Attorney or through their New Developers and it is prayed accordingly.

b. The interim measures shall remain effective for 90 days within which the Petitioner-Society shall take steps for commencement of the arbitral proceedings.

28) With above directions, the Arbitration Petition is allowed. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

29) After the judgment is pronounced, the learned counsel appearing for the Respondent prays for stay of the judgment for a period of four weeks. The request is opposed by the learned counsel appearing for the Petitioner. Considering the nature of findings recorded in the order, prayer for stay of the judgment is rejected.

[SANDEEP V. MARNE, J.]

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