
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.369 OF 2024

Sadguru Realcon Pvt. Ltd.

....Petitioner

Versus

Chogledham Co-Operative Housing Society Ltd.

....Respondent

Mr. Aseem Naphade a/w. *Mr. Dipen Furia & Ms. Neha Sonar i/b. Shah & Furia Associates, for Petitioner.*

Mr. Anand Pai a/w. *Sachin Mhatre, Sahil Sayyed, Diksha Shridhar, Ishita Kamath & Smriti Rajeev i/b. Mhatre Law Associate, for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 26, 2026

ORAL JUDGEMENT :

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) impugning an order dated March 21, 2024 passed by the Learned Arbitral Tribunal under Section 17 of the Act (*“Impugned Order”*).
2. The core grievance of the Petitioner, Sadguru Realcon Pvt. Ltd. (*“Developer”*), is that the Impugned Order refuses to interfere with a stay on the effect of a termination notice dated November 7, 2023, by which, the Respondent-Society (*“Society”*) terminated a Development

Agreement (“**DA**”) dated September 28, 2013 (executed ten years before its termination).

3. The DA records the fact that the Society was actually engaged in a civil suit (“**Suit**”) with the original landowners from whom the Society was meant to get a conveyance of the underlying land and that the suit was at the stage of final hearing. The recitals in the DA entail the Developer engaging liaison and professional expertise and that the Developer having sufficient financial means to obtain conveyance in favour of the Society. Clause 8 of the DA entails the Developer assisting in having disputes settled between the Society and the original landowners, who is also the occupant of Flat No.102 of the Society.

4. It is the case of the Society that it desired to terminate the DA on account of the Developer not helping resolve the disputes with the original landowners; not providing a bank guarantee; not fully paying the hardship compensation that had been contracted; and not reimbursing stamp duty and registration fees for the conveyance that was eventually executed pursuant to the Society successfully having the Suit decreed.

5. The Suit led to the Society obtaining conveyance in favour of the Society on its own effort. Indeed, this became subject matter of First Appeal No.440 of 2018, in which no reliefs have been obtained by the

landowners. Meanwhile, in execution proceedings, conveyance has been obtained by the Society with its own efforts. That facet of the matter forms subject matter of a Special Leave Petition (Civil) No.25618 of 2019 of the Supreme Court, which directed that the conveyance shall be acted upon and completed, but no third-party rights would be created during the pendency of the First Appeal before the High Court.

6. Mr. Aseem Naphade, Learned Advocate for the Developer would submit that the termination notice was untenable and ought to have been stayed by the Learned Arbitral Tribunal. The termination has nothing to do with the absence of provision of assistance in obtaining conveyance, he would submit, but the Impugned Order turns entirely on the facet of the Developer not having granted assistance with obtaining the conveyance.

7. Mr. Naphade would also point to communication from the Developer to the Society on two occasions, namely, on July 30, 2014 and on April 22, 2015, whereby the Developer advised the Society to withdraw the prayer from the Suit seeking deemed conveyance. However, the Society did not agree with the advice and persisted with the Suit and eventually obtained a decree. The Developer could not be faulted, he would contend, because the Developer indeed gave advice

on withdrawing the Suit and also later proposed to take over the litigation on his own, which the Society did not favourably respond to.

8. On the other hand, Mr. Pai on behalf of the Society would submit that the absence of assistance is an integral facet of the termination notice and would point out that apart from the conveyance support, the Developer was disengaged and not invested in the project in the form of any resources, whether financial or otherwise. Mr. Pai would contend that the having signed the DA, the Developer did not indicate being invested in the project and after ten years, the Society was fully entitled to terminate the DA. He would submit that the view of the Learned Arbitral Tribunal is well borne out as a reasonable and plausible interpretation of the material on the record.

9. Having heard the parties and having examined the record and the Impugned Order, I find that the view returned by the Learned Arbitral Tribunal has returned an eminently plausible view, namely, that the Developer has not rendered active assistance in resolving the dispute with the original landowner. This is not an implausible view that is without support from the material on record.

10. Mr. Naphade's reliance on an offer made in 2015 to seek a pursuit of the Suit by the Developer on his own, and seeking consent for that from the Society and its advocate, to enable the Developer to appoint its own advocate and take charge of the proceedings, does not

turn the needle in the Developer's favour, inasmuch as there is nothing on the record to show that such suggestion was followed up actively or that other provisions of the DA were actively pursued by the Developer. The Developer appears to have checked the box over a decade ago, and that apart, has not otherwise invested energy and resources in the project.

11. The Arbitral Tribunal, being the master of the evidence, is the best judge of the quality and quantity of evidence and to ascertain the most appropriate interlocutory arrangement that would adjust the competing interests of the respective parties. When one examines the Impugned Order from this prism, it becomes clear that the Impugned Order does not contain any perversity necessitating any interference by the scope in the exercise of jurisdiction under Section 37 of the Act.

12. In one view of the matter, the Supreme Court having restrained the creation of any third party interest, it would not be possible to effect the development with any other developer, and yet, it is equally true that it would not be the basis to interfere with what otherwise is adjudicated by the Learned Arbitral Tribunal as *prima facie* valid termination, and therefore, unworthy of interference.

13. Applying the standard principles enunciated in ***Wander vs. Antox¹***, governing approach to interlocutory arrangements, in my view,

1 *Wander Ltd. Vs. Antox India (P) Ltd. – 1990 Supp SCC 727*

a case has not been made out for interference with the Impugned Order. *Prima facie*, the DA appears to have become stale in relation to the Developer's role in it (it was signed in 2013), and even if the Developer is proved right, it cannot be said that damages would not compensate the Developer. The following extract from *Wander vs. Antox* would be appropriate to cite:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

[Emphasis Supplied]

14. For the aforesaid reasons, in my. View, the Petition deserves to be ***dismissed***. No order as to costs.

15. Needless to say, no comment in this order is an expression of an opinion on the merits of the matter and the arbitral proceedings shall

be conducted uninfluenced by the non-interference with the Impugned Order, by this Court. In any case, the jurisdiction itself reviews only a *prima facie* view rendered by the Learned Arbitral Tribunal.

16. 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.]