

Prajakta Vartak

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

**COMMERCIAL ARBITRATION PETITION (L.) NO.4301 OF 2022**

Maniar Associates LLP ..Petitioner  
Vs.  
Vijay Niwas Co-op. Hsg. Soc. Ltd. & Ors. ..Respondents

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Mr. Rohan Savant with Ms. Sneha Marjadi i/b. Jay Vakil for Petitioner.  
Mr. Zain Mukhi with Mr. Smit Nagda for Respondent No.1-Society.  
Mr. Shanay Shah with Mr. Z. A. Jariwala and Mr. Ganesh Ambekar i/b.  
M/s. MDP Partners for Respondent No.2.  
Mr. Kunal R. Kumbhat i/b. Dhawal Sangani for Respondent No.3.

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**CORAM : G.S. KULKARNI, J.  
DATE : MARCH 16, 2022.**

**P.C.:**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the petitioner is before the Court praying for interim reliefs pending the arbitral proceedings.

2. The need for the petitioner to initiate the present proceeding has arisen under the Redevelopment Agreement dated 06 July, 2021 entered by the petitioner with the respondent no.1-society (for short 'the society'). The said agreement concerns the premises of the society which are now subject matter of redevelopment to be undertaken by the petitioner. The existing building comprised of 12 flats belonging to 12

members of the society. It is petitioner's case that in respect of the flat which is stated to be occupied by respondent no.3, situated on the ground floor, and on the front side of the building being flat no.1, there is a dispute between respondent no.2 and respondent no.3. Respondent no.2 has filed a suit in this Court (Suit No.337 of 2016) in which respondent no.2 has contended that respondent no.3 is a trespasser, Respondent No.2 is seeking a relief in the suit that respondent no.3 be removed from the said flat and the possession of the flat being handed over to respondent no.2. Such suit is pending, also so far, there are no interim orders passed in the suit. The suit is stated to be at the stage of recording evidence.

3. Be that as it may, the concern of the petitioner in the present proceedings is that in view of the *inter se* disputes between respondent no.2 and respondent no.3, flat no.1 is not being vacated by respondent no.3 though all other 11 members have vacated their respective flats/tenements. The petitioner contends that the building is required to be demolished which is already in a dilapidated condition.

4. It is in these circumstances, the prayers are made in the present proceedings that directions be issued to the respondents not to cause any obstruction in the redevelopment process, and that vacant possession of the said ground floor flat, which is in possession of

respondent no.3, be handed over to the petitioner/society, so that the redevelopment process can proceed further. It is submitted on behalf of the petitioner that respondent No.3 by not vacating the said flat is causing serious prejudice in the redevelopment work.

5. I have heard learned counsel for the parties, as also I have perused the record. At the outset it needs to be noted that, it is quite settled that the minority members of the society cannot take a position contrary to the will of the majority members of the society. In the present case, the society has taken a decision to redevelop its building which is already in a dilapidated condition which is now required to be demolished. As per the agreement in question, respondent no.3 has agreed to appoint the petitioner as a developer. It appears to be not in dispute that there are 12 members out of which, 11 members have vacated their respective premises, except for respondent No.3 who is not vacating his flat, as a result of an inter se dispute between him and respondent no.3. Thus, both these respondents are causing obstruction to the redevelopment.

6. In such circumstances, in my opinion, the petitioner has certainly made out a prima facie case for grant of interim measures pending the arbitral proceedings. However, after some deliberation on the proceedings, learned counsel for respondent nos.2 and 3 have taken a fair

stand. They state and agree that the disputes *inter se* between respondent no.2 and respondent no.3 are already subjudice in Suit No.337 of 2016 filed before this Court and that the rights of these parties would be determined in the proceedings of such suit. They would also state and agree that being parties to the suit they have a right to file appropriate interim proceedings/application as the situation may arise and seek such appropriate interim orders. Learned counsel for respondent no.2 and respondent no.3 also would not dispute that the redevelopment process cannot be stalled in view of the pending suit between these parties.

7. Mr. Kumbhat, learned counsel for respondent no.3 submits that his client is not averse to hand over possession of the said premises/flat to the petitioner-society, so that the redevelopment can proceed. He fairly submits that such handing over of the possession of the said flat, would be subject to the outcome of the pending suit as instituted by respondent no.2 against his client respondent no.3. Mr. Kumbhat, however, submits that as respondent No.3 is in possession of the said flat, respondent no.3 would be entitled to the transit rent as also to be put in possession in the permanent alternate accommodation after the redevelopment is complete and which shall be subject to the outcome of the pending suit and the orders to be passed therein.

8. Mr. Shanay Shah, learned counsel for respondent no.2 submits that, in the event respondent no.2 has some better rights and if respondent No.2 is to take a position that, the benefit of the transit rent and entitlement of the redeveloped flat needs to come to respondent No.2 in that event, it would be open to respondent No.2 to seek such appropriate reliefs in the pending suit. Mr. Shah's contention in my opinion, is fair and correct as in the present proceedings, it is not possible for this Court to determine any rights either of respondent nos.2 and 3 qua the flat in question, as such rights are already subject matter of the pending suit.

9. The fact remains that as respondent no.3 is in possession of the tenement in question and would now be handing over possession of such tenement to the petitioner/society. Hence considering the consistent view taken by this Court in **Heritage Lifestyles and Developers Pvt. Ltd. vs. Amar-Villa Co-Operative Housing Society and others**<sup>1</sup> and in **Saikripa Co-operative Housing Society Ltd V/s. Osho Developers & Ors.**<sup>2</sup>, the party who is dispossessed, would be entitled to the transit rent as it is such party who is put to hardship.

10. In the above circumstances, in my opinion, respondent no.3 would be entitled for payment of transit rent by the petitioner. However,

1 2011(3) Mh.L.J. 865

2 Commercial Arbitration Petition (L.) No.1097 of 2022 decided on 18.01.2022

certainly this shall be subject to the rights of respondent no.2 to make such appropriate claims in the pending suit in the event some better rights are being asserted by respondent no.2, and which shall purely be a subject matter of consideration in the pending Suit. Keeping such rights of the parties open to be asserted in the pending suit, in my opinion, the present proceeding would not warrant any further adjudication. Also there is a statement made by learned counsel for respondent no.3 that his client would hand over the possession of the flat in question within three weeks from today which stands accepted. The petition is accordingly disposed of by the following order:-

**ORDER**

- i. Respondent no.3 shall hand over the possession of the premises/flat which is in his possession, to the petitioner within three weeks from today.
- ii. Handing over of the possession shall be subject to the outcome of the pending suit filed by respondent no.2 against respondent no.3 and the orders which may be passed on such suit.
- iii. Respondent no.3 is entitled to the transit rent by the petitioner-society as being paid to the other members of the society, which shall also be subject to any order which respondent no.2 may obtain in the pending suit. All contentions of both these respondents on any such issue are expressly kept open.
- iv. The advance transit rent and any other amounts payable, as being paid and as applicable to the other members of the society shall be paid to respondent no.3 on the day the possession is being handed over by respondent no.3 to the petitioner-society.

v. In so far as the agreement for permanent alternate accommodation is concerned, respondent No.2 and 3 are at liberty to seek appropriate orders in that regard in the pending suit. All contentions of both these respondents on any issue are expressly kept open.

vi. Disposed of in the aforesaid terms. No costs.

vii. Needless to observe that in the event the inter se rights between respondent nos. 2 and 3 are not decided in the pending suit between these parties, on the day the construction of the building is complete and possession of the redevelopment premises is to be handed over, in such event, as respondent no.3 shall be handing over the possession of the flat in question, the petitioner/society shall hand over possession of the redeveloped premises to respondent no.3, which shall be subject to the final orders which may be passed in the pending suit.

viii. Disposed of in the above terms. No costs.

**[G.S. KULKARNI, J.]**