

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL STAMP NO.14530 OF 2022

Khimji Devji Shah and Anr ... Appellants
V/s.
Shree Simandhar Developers Through
its Proprietor P.B. Shah (Deceased) and
Jayalaxmi P Shah and Ors ... Respondents

**WITH
INTERIM APPLICATION STAMP NO.14533 OF 2022**

Khimji Devji Shah and Anr ... Applicants
V/s.
Shree Simandhar Developers Through
its Proprietor P.B. Shah (Deceased) and
Jayalaxmi P Shah and Ors ... Respondents

**WITH
INTERIM APPLICATION STAMP NO.14536 OF 2022**

Khimji Devji Shah and Anr ... Applicants
V/s.
Shree Simandhar Developers Through
its Proprietor P.B. Shah (Deceased) and
Jayalaxmi P Shah and Ors ... Respondents

Mr. Sunil D Mogre with Mr. Ashutosh Shukla for the
appellant.

Ms. Henna P Shah for respondents.

CORAM : AMIT BORKAR, J.

DATED : MARCH 2, 2023

P.C.:

INTERIM APPLICATION STAMP NO.14533 OF 2022 :-

1. The appeal is filed by the appellants, there is delay of 2 days in filing the present first appeal.
2. Considering the reasons stated in the application, the Interim Application is allowed in terms of prayer clause (a).
3. No costs.

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4. The appeal arises out of a notice of motion filed by the defendant. The prayers clause in the notice of motion prayer clause (b) of notice of motion is in two parts. (i) To reject the plaint. (ii) To refer the parties to Arbitration in exercise of power under Section 8 of Arbitration and Conciliation Act, 1996.
5. Impugned order is joint exercise of power under Section 7 Rule 11 and Section 8 of Arbitration and Conciliation Act, 1996.
6. Therefore, the issues which needs to be decided amongst other is about maintainability of such appeal.
7. According to the respondents, appeal against the order in exercise of power under Section 8 of Arbitration and Conciliation Act, 1996 is not maintainable. However, according to the appellant the first part of prayer sought and granted by the Court is rejection of plaint. Therefore, it has force of decree. Therefore, appeal is maintainable. Keeping question of maintainability of the appeal open. I pass, following order.

8. Admit.

INTERIM APPLICATION STAMP NO.14536 OF 2022 :-

9. List the Application “For Hearing” on 23rd March, 2023.

(AMIT BORKAR, J.)