



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION (L) NO.12002 OF 2026

WITH

COMMERCIAL ARBITRATION PETITION (L) NO.39719 OF 2025

E.V. Homes Construction Pvt. Ltd.

...Applicant/Petitioner

V/s.

Vishwashanti Cooperative Housing  
Society Ltd

...Respondent

*Ms. Gulnar Mistry with Mr. M. Kashif Wahendna i/b. Mr. Manoj Harit for  
the Petitioner.*

*Ms. Manjusha Kudre with Ms. Prajakta Phillips and Ms. Shraddha  
Sagvekar for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 6 MAY 2026.

**P.C.:**

1) These are proceedings filed under Section 9 and Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) seeking interim measures before commencement of arbitral proceedings and for constitution of Arbitral Tribunal, respectively. The disputes between the parties are said to have arisen out of Development Agreement dated 14 May 2024, which contains arbitration clause. The proceedings are filed under an apprehension that the Society may terminate the Development Agreement and appoint another developer.



2) I have heard Ms. Mistry, the learned counsel appearing for the Petitioner/Applicant and Ms. Kudre, the learned counsel appearing for the Respondent-Society.

3) The Application and Petition are premised on Development Agreement dated 14 May 2024 shown to have been executed between the Petitioner/Applicant and the Respondent-Society. The Agreement undoubtedly contains arbitration clause No.26.2, which reads thus:

26.2 In the case of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity interpretation, breach or termination, between any of the Parties such Parties shall attempt to be resolved by the Parties in good faith. In case the Parties are unable to settle their disputes within 15 days of intimation of dispute by either Party, all disputes, claims and questions whatsoever which may arise between the Parties with respect to this Development Agreement or touching or relating to or arising out of this Development Agreement and obligations of the Parties hereunder or as to any act or omission of any Party or as to any other matter in anyway relating to this Development Agreement or the rights, duties and liabilities of the Parties under this Development Agreement shall be referred to the Conciliator nominated and mutually appointed by the Parties. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modifications or amendments or re-enactments thereof for the time being in force and rules made thereunder. The venue of Arbitration shall be Mumbai and the arbitration proceedings shall be conducted in English. The costs of arbitration will be initially paid jointly by Parties hereto in equal shares. The Arbitrator shall be entitled to determine by the award as to who will finally bear the cost and in what proportions. The Award of the sole arbitrator shall be binding on all Parties.

4) Ms. Mistry contends that the current managing committee of the Society is acting contrary to the Development Agreement dated 14 May 2024. That mere change in the managing committee cannot have any effect of the contractual obligations created with the society. She submits that the Petitioner is appointed, and the Development



Agreement is executed in pursuance of the decision taken by the general body, whose meeting was conducted under the aegis of the representative of cooperative registrar. That the Dy. Registrar has issued NOC for the appointment of Petitioner and for carrying out the redevelopment through Petitioner. She submits that the current managing committee is holding negotiations with another developer and that therefore interim measures are necessary. That since the Development Agreement contains arbitration clause, a sole arbitrator be appointed.

5) *Per contra* Ms. Kudre submits that the Development Agreement relied upon by the Applicant /Petitioner is a void document and that the same has no existence in the eyes of law. That the Agreement has been signed by the persons not having authority to execute the same. It is submitted on behalf of the Respondent-Society that the Society has been registered on 14 March 2024 whereas the Resolution selecting the Applicant/Petitioner is shown to have been adopted in the alleged General Body Meeting held in November 2023. Ms. Kudre submits that elections of the Managing Committee of the Society were held in March 2025 when the first Managing Committee came into existence. It is therefore contended that on 14 May 2024 there was no valid committee in existence, which could have signed or executed the Development Agreement. It is submitted that since the Development Agreement is unauthorisedly executed, there is no valid arbitration agreement between the parties. Reliance is sought to be placed by Ms. Kudre on the judgments of the Apex Court in *Vidya Drolia and Others V/s. Durga Trading Corporation*<sup>1</sup>, *M/S. Panama Builders And Developers vs M/S. Nutan Kalpana Co-Op, Hsg. Soc. Ltd, Jaikishan Dass Mull V/s.*

<sup>1</sup> Civil Appeal No.2402 of 2019, decided on 14 December 2020.



*Lichhimirain Kanoria and Co.*<sup>2</sup> and *Garware Wall Ropers Ltd.*<sup>3</sup> vs. *Coastal Marine Constructions and Engineering Ltd.*<sup>3</sup> Ms. Kudre submits

that even in a referral jurisdiction under Section 11 of the Arbitration Act, this Court needs to conduct an enquiry into validity of principal agreement as well as the arbitration agreement contained therein. She submits that since there is no arbitration agreement between the parties, neither arbitrator can be appointed nor interim measures can be granted.

6) I have considered the submissions canvassed by the learned counsel appearing for the rival parties.

7) No doubt, while exercising jurisdiction under Section 11(6) of the Arbitration Act, this Court needs to conduct an enquiry into *prima facie* existence of arbitration agreement between the parties. However, that inquiry cannot extend to determination of validity of execution of the principal contract. As opposed to the language employed in Section 8 of the Arbitration Act, Section 11 does not use the word 'valid'. Therefore, all that needs to be examined by the referral court under Section 11(6) of the Arbitration Act is whether there is existence of arbitration agreement and not whether the agreement is valid.

8) It is seen that the Development Agreement dated 14 May 2024 is a registered instrument. It is shown to have been signed and executed by then Chairman, Secretary and Treasure. Society now contends that the three persons, who signed and executed the Development Agreement, did not have the authority in law to execute the same. Thus the factum of

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2 AIR 1974 SC 1579

3 AIR 2019 SC 2053



execution of the Development Agreement by someone on behalf of the society is not disputed. Only the authority of those persons to execute the agreement is sought to be questioned.

9) However, it is seen that the Development Agreement is otherwise backed by General Body Resolution adopted on 28 April 2024. It is seen that after registration of the Society on 14 March 2024, a requisition was sent for nomination of authorised officer from the office of the Deputy Registrar for conduct of Special General Body Meeting for appointment of Developer. Accordingly, the Deputy Registrar nominated Mr. Adesh Bhoir by letter dated 16 April 2024 as authorised officer to oversee the conduct of Special General Body Meeting on 28 April 2024. This is how the Special General Body Meeting has been conducted on 28 April 2024 under the aegis of authorised officer nominated by the Deputy Registrar. The Meeting was apparently attended by 165 out of 189 members. The Resolution would indicate that the Society had received 6 bids and the General Body has adopted a resolution for appointment of the Petitioner as the Developer. It appears that there is 100% consent to the appointment of the Petitioner as Developer in the General Body Resolution and none of the 165 members, present and voting, opposed the resolution, which was unanimously adopted.

10) After adoption of resolution in the Special General Body of the Society, a proposal was sent to the Deputy Registrar, Co-operative Societies seeking 'No Objection Certificate' and by letter dated 30 April 2024, the NOC has been issued by the Deputy Registrar. It is only after adoption of General Body Resolution of 28 April 2024 and issuance of



NOC dated 30 April 2024, that the Development Agreement appears to have been executed and registered on 14 May 2024. 2026-10C-OS:11937

11) Ms. Kudre has submitted that the society members were misguided at the time of adoption of GB resolution dated 28 April 2024. However upon being queried as to whether the resolution is challenged before the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, the answer is in the negative. *Prima facie*, the case involves change of mind by certain section of members of the Society who now want the redevelopment to be executed through another developer. However the Society has not terminated the Development Agreement dated 14 May 2024 and it cannot unilaterally proceed to ignore the Development Agreement and proceed to appoint a new developer.

12) Considering the above position, I am unable to record a conclusive finding as of now that the Development Agreement is void document or that it cannot have any existence in law. This issue can be raised by the Respondent-Society before the Arbitrator by filing objections under Section 16 of the Arbitration Act or by leading evidence. Section 16 is a much wider jurisdiction than the one conferred on the referral court under Section 11 of the Arbitration Act. In *M/S. Panama Builders And Developers vs M/S. Nutan Kalpana Co-Op, Hsg. Soc. Ltd.*(supra), strenuously relied upon by Ms. Kudre, a Single Judge of this Court has decided challenge to the Order passed by the Arbitrator under Section 16 of the Arbitration Act. Respondent-Society can also raise a similar objection before the Arbitrator. As of now I am *prima facie* satisfied about existence of arbitration agreement between the parties. In my view, therefore, it would be just and proper to constitute Arbitral



Tribunal comprising of a sole Arbitrator. Ms. Kudre has urged that the society comprises of members who belong to economically weaker section and cannot afford arbitration. Though this cannot be a consideration for denying the agreed dispute resolution mechanism of arbitration, the apprehension can be taken care of by appointing an advocate of this Court as an arbitrator and by directing payment of Schedule IV fees.

13) So far as the Petition filed under Section 9 of the Arbitration Act is concerned, this Court has already granted ad-interim measures in favour of the Petitioner by order dated 10 March 2026, which reads thus:

1. Heard Ms. Mistry, the learned counsel appearing for the Petitioner and Ms. Kudre appearing for the Respondent-Society.

2. It appears that the current Managing Committee of the Respondent-Society has apparently decided not to act on the Development Agreement dated 14 May 2024 inter alia on the ground that the same was executed when there was no valid Managing Committee constituted in respect of the Society. However, along with the Development Agreement, certified true copy of the Minutes of General Body Meeting held on 28 April 2024 has been appended. This shows that decision to undertake Redevelopment and to appoint Petitioner as a Developer is taken not by the Managing Committee but by the General Body of the Society.

3. In view of the above position, there shall be ad-interim measures in favour of the Petitioner in terms of prayer clauses (a), (b) and (c) till the next date of hearing which read thus:

“a. pending the hearing and final disposal of the arbitral proceedings, this Hon'ble Court be pleased to restrain the Respondent Society from terminating the Development Agreement dated 14th May 2024 entered into with the Petitioner and from dealing with any third-party developers with respect to the proposed redevelopment of the said property comprising 7 (seven) buildings and other structures on the said plot No. 16;

b. pending the hearing and final disposal of the arbitral proceedings the Respondent Society be restrained from acting



upon the proposal dated 28.11.2025 “Tajj Builders and Developers Llp” in respect of the redevelopment of the Respondent Society;

c. pending the hearing and final disposal of the arbitral proceedings, this Hon'ble Court be pleased to restrain the Respondent Society from creating any third-party rights in favour of another developer/builder/contractor in respect of or in connection with the redevelopment of the Respondent Society that is the subject matter of the Development Agreement dated 14.05.2024;”

4. Petitioner to file Application under Section 11 of the Arbitration and Conciliation Act, 1996 and to circulate the same for analogous hearing alongwith the present Petition. List the Petition for further consideration on 24 April 2026.

14) Since the Arbitral Tribunal is being constituted, it would be appropriate to convert Section 9 Petition (Commercial Arbitration Petition (L) No.39719 of 2025) into Section 17 Application to be decided by the Arbitral Tribunal on its own merits. Till decision of Section 17 Application, the ad interim measures already granted can be continued.

15) I accordingly, proceed to pass the following order:-

(A) Ms. Apoorva Thipsay, an Advocate practicing in this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Development Agreement dated 14 May 2024. The contact details of the Arbitrator are as under:-

Office Address :- Chambers of Dr. Birendra Saraf, 302, Oval House, 3<sup>rd</sup> Floor, Kala Ghoda, Fort, Mumbai.

Mobile No. :- 9892806541

Email ID :- apurva.thipsay@gmail.com



(B) 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.

(C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of 2 weeks from receipt of a copy of this order.

(D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, 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.

(E) The fees of the sole Arbitrator shall be as 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.

16) Section 9 Petition (Commercial Arbitration Petition (L) No.39719 of 2025) is converted into Section 17 Application to be decided by the Arbitral Tribunal on its own merits. Till the Arbitral Tribunal decides Section 17 Application, ad-interim measures granted in terms of prayer clauses (a), (b) and (c) shall continue to operate.



17) All rights and contentions of the parties on merits as well as on the issue of arbitrability are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

18) With the above directions, both the proceedings are **disposed of**.

**[SANDEEP V. MARNE, J.]**