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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 49 OF 2023
WITH
INTERIM APPLICATION NO. 7480 OF 2025

Vandana Chintman Save ... Petitioner
(Original Intervenor)

Vs.

Aatmeya Constructions and ... Respondents
Another

Mr. Viraj Parikh i/b. Mr. Dharmesh S. Jain for the Petitioner.

Ms. Janhavee Joshi a/w. Mr. Viral Dedhia for Respondent
No.1.

CORAM : GAURI GODSE, J.

DATE : 9th JANUARY 2026

ORDER :

1. Learned counsel for the respondents raises a preliminary objection that the arbitration petition under Section 34 is not maintainable as the petitioner is not a party to the arbitration proceedings. She relies upon the decision of this court in the case of *Mukesh Nanji Gala and Others vs. M/s. Heritage Enterprises, Mumbai and Another*¹, and in particular she relies upon the findings recorded in paragraphs 19 to 33 of the judgment.



2. Learned counsel for the petitioner submits that the petitioner's application for intervention in the arbitration proceedings was rejected on the ground that he had also applied for filing counter claim. He points out the observations in the impugned award in recording the decision on the 5th hearing, i.e. 21st April 2019 which records that since the petitioner had failed to contribute for arbitration proceedings, the application was rejected. He submits that rejection of the petitioner's application before the Arbitral Tribunal could not have been challenged as there is no other remedy available except filing of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act") praying for setting aside the arbitral award. He therefore submits that the petitioner would be entitled to maintain the present petition under Section 34 of the Arbitration Act.

3. This court in ***Mukesh Nanji Gala and Others*** has observed in paragraph 19 as under :

"19. A perusal of the aforesaid provisions of the Act and the scheme makes it clear that only the parties to the arbitration agreement can exercise various rights and invoke the mechanism of adjudication of disputes by arbitration by referring their disputes to arbitration for



adjudication and not by an outsider. The only exception carved out under the Act is under sections 40 and 41 i.e. in case of the death of a party to the arbitration agreement which can be enforceable by or against the legal representative of the deceased and in case of insolvency, if such insolvent was party to arbitration agreement and if official assignee or receiver adopts such contract”.

4. The petitioner was admittedly not impleaded to the arbitrary proceeding. The impugned award directs the society to recover amount of the claim from respective members, but there is no direction issued against the members in the award. However, the petitioner is aggrieved by letter issued by the society on 6th June 2022 calling upon the petitioner to make payment as per arbitral award. The letter issued by the society further records that the society would not issue any no objection certificate permitting the petitioner to execute any mortgage, sale or leave and licence agreement in respect of the flat unless the amounts due are paid.

5. Considering the legal principles settled by the decision in the case of ***Mukesh Nanji Gala and Others*** the petition may not be maintainable.



6. However, the learned counsel for the petitioners seeks time to place on record the decisions to support his submissions that the petition would be maintainable.

7. To enable the learned counsel for the petitioner to support his submissions that the petition would be maintainable, list the petition on 16th January 2026 for further hearing.

[GAURI GODSE, J.]