



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION APPLICATION (L) NO.27922 OF 2025

Shri Sati Builders and Developers
Private Limited

...Applicant

V/s.

Garodiya Co-operative Housing Society
Limited and Ors.

...Respondents

Mr. Karl Tamboly (*through VC*) with *Ms. Neuty N. Thakkar & Mr. Yash Sheth i/b. Mr. Tushar A. Goradia for the Applicant.*

CORAM: SANDEEP V. MARNE, J.

DATED: 28 APRIL 2026.

P.C.:

1) This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) seeking appointment of the Arbitrator for adjudication of disputes and differences between the parties that are said to have arisen out of the Development Agreement dated 15 February 2014.

2) I have heard Mr. Tamboly, the learned counsel appearing for the Applicant.

3) By order dated 13 March 2026 this Court had issued notice to the Respondent and had granted hamdast. Affidavit of service of hamdast is tendered, which indicates that notice has been served on watchman employed at the premises of Respondent No.1-Society. Respondent Nos.2 to 4 are supporting parties to the Applicant. None has appeared on behalf of the Respondents.

4) The real grievance of the Applicant is termination of the Development Agreement by the first Respondent-Society vide notice dated 24 July 2019. Immediately after termination, Applicant invoked arbitration clause No.77 in the Development Agreement by serving notice under Section 21 of the Arbitration Act on 19 August 2019. As held by the Hon'ble Apex Court in *Arif Azim Co. Ltd. Vs. Aptech Ltd.*¹ under the provisions of Article 137 of the Limitation Act, 1963 for filing of Application under Section 11 (6) of the Arbitration Act the period of limitation is three years from the date of accrual of cause of action. In the present case, the cause of action arose on 19 September 2019 on expiry of period of 30 days specified in the notice. Therefore, the present Application ought to have been filed on or before 19 September 2022. The Application is however, filed on 9 September 2025. The Application is thus filed after a period of six long years and there is delay of more than three years in filing the Application.

5) Mr. Tamboly relies on order passed by the Hon'ble Supreme Court in *RE: Cognizance for Extension of Limitation*², under which the Hon'ble

1 (2024) 5 SCC 313

2 (2022) 1 SCC (L&S) 501

Supreme Court has excluded period from 15 March 2020 to 28 February 2022 for the purpose of computation of limitation in the light of Covid-19 pandemic.

6) Even if the said benefit of limitation is extended to the Applicant, there would be delay in excess of one year in filing the present Application. The Applicant has not even bothered to file Application for condonation of delay. No doubt, in *Arif Azim Co. Ltd.*(supra) it is held that the delay in filing Application under Section 11(6) can be condoned, even in absence of a formal application, such power is to be exercised in rare and exceptional circumstances and by keeping in mind the length of delay. In the present case, the Applicant is found to be negligent in not taking necessary steps for filing of Application in an expeditious manner. Considering the position that the delay is in excess of one year, I am not inclined to treat this as a rare and exceptional case for condoning the delay in absence of a formal application. In my view, therefore, the Arbitration Application is grossly time barred and the reference under Section 11 (6) of the Arbitration Act cannot be made.

7) The Application is accordingly **dismissed**.

[SANDEEP V. MARNE, J.]