IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.217 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
NOTICE OF MOTION NO.688 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.763 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.234 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.45 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
NOTICE OF MOTION NO.350 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.32 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.1080 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
CHAMBER SUMMONS NO.40 OF 2020

APRIL 29, 2026

Aarti Palkar

IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017

WITH
INTERIM APPLICATION (L) NO.10227 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.24824 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.3390 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.50 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.8065 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.32205 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.2136 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.37939 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION NO.410 OF 2021

IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.10632 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.32962 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.23486 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.19656 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION NO.2365 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION NO.1912 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.1929 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.1938 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.11413 OF 2026
IN

COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.7108 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.12903 OF 2021
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION (L) NO.10988 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017
WITH
INTERIM APPLICATION NO.8210 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.559 OF 2017

Mulund Raviraj Co-Operative Housing Society Ltd. ....Petitioner

Versus

Rupji Constructions & Anr. ....Respondents

Mr. Tushar Dahibawkar *a/w. Vikhil Dhoka and Abhijit Mukherjee, Advocate for Petitioner in CARP/559/2017.*

Mr. Shadab Jan *a/w. Sujit Lahoti, Tejasvi Nakashe, & Nidhi M. Jain i/b. Sujit Lahoti & Associates, for Applicant in IAL/11413/2026 and Respondent in CARBP/559/2017.*

Mr. Dormaan J. Dalal *a/w. Ms Shirley Mody, for Applicant in CHSCD/40/2020.*

Ms. Ankita Singhania *i/b. Akshay K., Advocate for Applicant in IA/1912/2024.*

Mr. Shivprasad D. Borade *a/w. Sayli Apte, for Respondent No.2.*

Ms. Sunita S. Warang *a/w. Dinesh Sanap & Mandar Nalawade, for Intervener.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: APRIL 29, 2026

JUDGEMENT:

Context and Factual Background:

1. This judgement will dispose of Commercial Arbitration Petition No. 559 of 2017 (***"Section 9 Petition"***), filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) and no less than 31 Interim Applications filed in it.

2. The Section 9 Petition was originally filed in connection with disputes and differences between the Petitioner, Mulund Raviraj Co-operative Housing Society Ltd. ***("Society")*** and Respondent No.1, M/s Rupji Constructions (***"Developer"***), a partnership firm, with the partners being the other Respondents, Late Mr. Madhukar Rupji (***"Madhukar"***) and his son, Mr. Tejal Rupji (***"Tejal"***).

3. The Society and the Developer were parties to a Development Agreement dated May 2, 2013 (***"DA"***), which is the contract containing the arbitration agreement, giving rise to the jurisdiction under Section 9 and Section 17 and thereby, Section 37 of the Act. Madhukar and Tejal have been in jail for prolonged periods and Madhukar passed away in 2022, while his son, Tejal continues as a partner of the Developer.

4. The Section 9 Petition had been filed way back on October 6, 2017 by the Society, seeking various reliefs against the Developer, including injunction against creation of third party rights; injunction against claiming of any benefits under the DA; injunction against the Municipal Authorities from sanctioning any plan; directions to the Developer to pay statutory dues pursuant to the DA; certain disclosures of assets; and deposit of a sum of Rs.7 Crores.

5. Various orders came to be passed in the Section 9 Petition from time to time, including disclosure of assets and injunctions that were directed by Order dated December 14, 2017 (***"December 2017 Order"***) and deposit of various sums with the Prothonotary and Senior Master of this Court. Proceedings under Section 9 Petition continued for a prolonged period of time until an Arbitral Tribunal was appointed on September 2, 2024, when a Learned Single Judge of this Court disposed of Commercial Arbitration Application (L) No.6622 of 2022, appointing a sole arbitrator under Section 11 of the Act (***"Section 11 Application***").

6. Among others, the directions issued under the Section 9 Petition included attaching houses, cars, wrist watches and such other assets of Madhukar and Tejal, and their sale and deposit of proceeds with the Court. Multiple interim applications too came to be filed by persons who are not parties to the arbitration agreement, either as a signatory or as a non-

signatory veritable party. These will be dealt with subsequently in this judgement. In all, a sum of over Rs. ~11 crores is said to be lying in deposit with the Court in the Section 9 proceedings.

7. A Statement of Claim (***"SOC"***) dated January 17, 2025 was filed. The reliefs sought in the SOC and indeed in a Section 17 Application dated August 23, 2025 contained prayers similar, if not identical, to the prayers sought in the Section 9 Petition. The Section 17 Application was heard and reserved for orders on September 30, 2025. An order under Section 17 of the Act has since been passed by the Learned Arbitral Tribunal on February 4, 2026 (***"Section 17 Order"***). Commercial Arbitration Petition No. (L) 11290 of 2026 (***"Section 37 Petition***") is a Petition under Section 37 of the Act, challenging the Section 17 Order and has been listed for consideration at a subsequent date.

8. Initially, this entire set of proceedings was considered by me last year after judgement on the Section 17 Application had been reserved by the Learned Arbitral Tribunal. The Section 17 Order has now been passed. The Section 37 Petition challenging the Section 17 Order too has been filed. Therefore, it is felt appropriate to release orders in the Section 9 Petition by way of this judgement, taking judicial notice of what has transpired in the Section 17 proceedings.

9. A brief description of the various proceedings that have all been filed under the Section 9 Petition would be in order. Respondent no. 2 in the

Section 9 Petition is the Municipal Corporation of Greater Mumbai (***"MCGM"***), against which certain directions have been sought. The Society filed Notice of Motion No.350 of 2019 (***"IA 350"***) on November 30, 2018, seeking directions for sale of a plot at Mahul, Mumbai (***"Mahul Property"***) owned by the Developer and to appoint a Court Commissioner for the purpose and to add the proceeds of such sale to the deposit to be made in Court in aid of the arbitration proceedings under the arbitration agreement between the parties. It appears from the record that the Mahul Property was claimed by Madhukar and Tejal to have been jointly owned along with one Mr. Kamalakar Rupji, claimed to be Madhukar's uncle, who has passed away and is survived by one Mr. Chetan, a purported adopted child and successor in interest. A notice was issued to the said individual to make his interest clear to the Court. That apart, the Mahul Property is admittedly leased to an entity called Grauer and Weil for a period of 99 years with effect from April 1, 2016.

10. Interim application No.410 of 2021 (***"IA 410"***) has also been filed by the Society on January 28, 2021, seeking a direction to the Prothonotary and Senior Master to release a sum of Rs.~11.51 Lakhs to MCGM towards property tax. This Application also sought release of a sum of Rs.~3.76 Crores to the members of the Society in respect of transit rent.

11. While the Section 9 Petition and the interim applications in it have been pending, with various orders being passed from time to time, a series of

interim applications have been filed by various parties who have successfully litigated against the Developer and its partners in respect of other projects owned and controlled by Madhukar and Tejal, which needless to say, have nothing to do with the arbitration agreement that creates the Section 9 jurisdiction for the captioned proceedings.

12. Interim Applications filed by decree holders in other proceedings unrelated to the arbitration agreement contained in the DA, seeking intervention and impleadment in the Section 9 Petition, and release of various amounts deposited in Court in their favour in discharge of the decrees held by them in other forums are:

A] Interim Application No.2365 of 2024 filed on June 22, 2024 (***"IA 2365"***) – by an allottee in Rupji Akansha, another project of the Developer in Ghatkopar;

B] Interim Application (L) No.19656 of 2024 filed on May 6, 2024 (***"IA 19656"***) –by an allottee in a project called Rupji Dream;

C] Interim Application (L) No.24824 of 2024 filed on August 5, 2024 (***"IA 24824"***) – by an allottee in a project called Rupji Arena;

D] Interim Application (L) No 7108 of 2025 filed on March 4, 2025 (***"IA 7108"***) – by an applicant who is a decree holder of a money decree from the Civil Court in relation to another project;

E] Interim Application No. 1912 of 2024 ("***IA 1912***") is an interim application seeking release of funds from the amounts available with this Court towards discharge of a decree obtained from the State Consumer Disputes Redressal Commission respectively;

13. Interim Applications filed by various other third parties, without privity to the arbitration agreement contained in the DA, who have also filed proceedings seeking impleadment and intervention in Section 9 Petition, with some in the same breath also seeking a stay of proceedings in the Section 9 Petition to protect their interests, are:

A] CHSCD/217/2018 filed on February 23, 2018 (***"IA 217"***) – by a tenant in a building known as Swastik House;

B] NMCD/688/2018 filed on April 10, 2018 (***"IA 688"***); CHSCD/40/2020 filed on March 7, 2018; (***"IA 40"***); CHSCD/234/2019 (***"IA 234"***) filed on July 25, 2018; and IA(L)/37939/2024 (***"IA 37939"***) filed on December 13, 2024 - by allottees in another project titled Rupji Swapnapurti in Mahim-Dadar. Reliefs sought in these include prayer for modification of a particular order dated January 31, 2018 which directed the sale of the Mahim property, to include an express clause in the sale deed as sought in that application and a prayer for refund of a booking in the Mahim project ;

C] CHSCD/763/2019 (***"IA 763"***) filed on May 2, 2018 – by allottees in another project titled Rupji Akansha;

D] CHSCD/1080/2019 (***"IA 1080"***) filed on August 26, 2019 - filed by tenant-allottees in the same building;

E] CHSCD/32/2020 (***"IA 32"***) filed on August 27, 2019 by allottees in a project called Rupji Akansha;

F] IA(L)/50/2024 (***"IA 50"***) filed on January 1, 2024 – by allottees in a project called Rupji Koram;

G] IA(L)/32205/2024 (***"IA 32205"***) filed on October 16, 2024 - by an allottee in a project called Rupji Signature, seeking a refund of Rs. 74.11 lakhs;

H] IA(L)/8065/2025 (***"IA 8065"***) filed on March 11, 2025 – by allottees in Rupji Vedant, another project in Mulund, seeking intervention and compliance with an undertaking given in an affidavit dated October 21, 2024, in which, Tejal had promised that third-party decree holders would be paid within 12 months from the date of vacation of the December 2017 Order;

I] Interim Application (L) No.32962 of 2024 (***"IA 32962"***) – filed by a purchaser in the sale component of the Society's building, who has executed a registered agreement dated September 22, 2016 in this regard; and

J] Interim Application No. 8210 of 2025 (***"IA 8210"***) filed by one Kirti Thosar and Prakash Thosar, also seeking intervention and release of funds

14. Interim Applications have been filed by Tejal's purportedly estranged wife, Priyanka Tejal Rupji (***"Priyanka"***) and offspring of Tejal and Priyanka, named Advait and Ishika, also seeking intervention in the Section 9 Petition, as well as protective orders in respect of ancestral properties and maintenance amounts directed to be paid by the magistrate's court. Evidently, these applications have nothing to do with the arbitration agreement but appear to be reactions to the orders passed in the Section 9 Petition. These are:

A] CHSCD/45/ 2019 (***"IA 45"***) filed by Priyanka and her two children, who are said to be in possession of a flat after their separation from Tejal and in respect of which proceedings are said to be pending in the Family Court; and

B] Interim Application (L) No.23486 of 2022 (***"IA 23486"***) asking for release of 1/36th share of amounts deposited in Court, with interest, on the basis of a family dispute.

15. Other Interim Applications include Interim Application (L) No.12903 of 2021 (***"IA 12903"***) filed by Tejal seeking a direction to pay a sum of Rs.95 lakhs to MCGM and for release of a sum of Rs.15 lakhs to one Mr. Ganesh Jadhav in

respect of Consent Terms filed in certain execution proceedings before the Consumer Forum. Evidently, this has nothing to do with the arbitration agreement contained in the DA.

16. The Developer has filed Interim Application (L) No.1929 of 2024 dated January 18, 2024 seeking a direction to the Prothonotary and Senior Master to release Rs.25 lakhs towards legal fees (***"IA 1929"***). The Developer has also filed Interim Application (L) No.2136 of 2024 dated January 19, 2024 (***"IA 2136"***) seeking a recall of the December 2017 Order, permit sale of units in other projects and to enter into joint ventures in other projects with other Developers since those too stand injuncted in the Section 9 Petition, which otherwise pertains only to the DA between the Developer and the Society. The Developer has also filed Interim Application (L) No. 1938 of 2024 (***"IA 1938"***) by which reliefs against a termination notice dated March 6, 2017 issued by the Society has been sought, asking to be permitted to continue and complete the project under the oversight of a retired High Court Judge to be appointed as an arbitrator.

Analysis and Findings:

17. I have heard Mr. Shadab Jan, Learned Advocate on behalf of the Developer; Mr. Vikhil Dhoka, Learned Advocate on behalf of the Society; Ms. Ankita Singhania and Mr. Dormaan Dalal, Learned Advocates representing some of the Applicants in the Interim Applications, Mr. Ketan Trivedi,

Learned Court Commissioner appointed on an earlier occasion to monitor the various orders passed and their implementation. Numerous other advocates representing the numerous applicants filed in the Section 9 Petition have either adopted the submissions made by the aforesaid advocates or have put in their contentions in short notes on submissions, which typically mirror the contentions made.

18. With the assistance of these advocates and their submissions, both oral and written, I have examined the record. To ease the burden of the Court, Mr. Jan submitted a summary table setting out a comprehensive overview of all the Interim Applications pending in the Section 9 Petition. The other parties have not controverted the basic factual listing of what these Interim Applications were filed for. Therefore, this became a useful guide to navigate the extraordinarily voluminous record involved in these proceedings spread across 31 Interim Applications.

19. At the threshold, few words on the first principles of the jurisdiction would be in order. Indeed, the Section 9 jurisdiction is an equitable jurisdiction. Such jurisdiction is a creature of the self-contained code set out in the Act and sits at the first preliminary threshold in arbitral proceedings. It is the very first threshold because this jurisdiction can be invoked even before invoking the arbitration agreement under Section 21 of the Act. By enabling parties to an arbitration agreement to approach the Court even before

constituting an Arbitral Tribunal, the sole purpose of the Section 9 jurisdiction is the preservation and protection of the subject matter of the arbitration agreement. It would be appropriate to extract the provision:

> *9. Interim measures, etc. by Court.-*
>
> *(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:-*
>
> > *(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or*
> >
> > *(ii) for an interim measure of protection in respect of any of the following matters, namely:-*
> >
> > > *(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
> > >
> > > *(b) securing the amount in dispute in the arbitration;*
> > >
> > > *(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
> > >
> > > *(d) interim injunction or the appointment of a receiver;*
> > >
> > > *(e) such other interim measure of protection as may appear to the*

> ***Court to be just and convenient**, and the **Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it**.*
>
> *(2) **Where, before the commencement** of the arbitral proceedings, a **Court passes an order for any interim measure of protection** under sub-section (1), the **arbitral proceedings shall be commenced within a period of ninety days from the date of such order** or within **such further time as the Court may determine**.*
>
> *(3) **Once the arbitral tribunal has been constituted**, the **Court shall not entertain an application under sub-section (1)**, unless the Court finds that **circumstances exist which may not render the remedy provided under Section 17 efficacious**.*
>
> ***[Emphasis Supplied]***

20. A plain reading of the foregoing would show that the Section 9 jurisdiction is meant to empower the Court to preserve and protect the subject matter of the arbitration agreement to enable the arbitration proceedings to be meaningful. Access to this jurisdiction is available to a *"party"*, which is defined as a party to the arbitration agreement. The term "party" is defined in Section 2(1)(h) of the Act as *"a party to an arbitration agreement"*. Therefore, a person who may invoke the jurisdiction of the Section 9 Court must necessarily be a party to the arbitration agreement, under which arbitration proceedings are envisaged. It is in aid of such arbitration proceedings that protection under Section 9 is available.

21. Therefore, the arbitration agreement lies at the core foundation of the Section 9 jurisdiction. Without an arbitration agreement in existence, the jurisdiction does not exist. A party to the arbitration agreement may seek *"interim"* measures – the *final* measures falling in the domain of the Arbitral Tribunal and not the Court. The very concept of arbitration is that of an alternate dispute resolution forum created by conscious autonomous choice by the parties to the arbitration agreement. Therefore, privity to the arbitration agreement, and the objective of preserving the subject matter of the arbitration agreement lie at the core of the jurisdiction. The arbitration agreement in this case is contained in the DA and it relates to the redevelopment of the Society's property. The protectee against Developer in the Section 9 jurisdiction for purposes of protective measures would necessarily be the Society. For other parties in the world at large to be protectees, they would, at the least need to be *veritable* parties. I have dealt with this later in this judgement.

22. Another facet of the Section 9 jurisdiction is that when relief is granted, the Section 9 jurisdiction is meant to have a limited temporal shelf life – the indicative benchmark is 90 days, and indeed Courts are empowered to continue the reliefs for longer. Yet, upon an Arbitral Tribunal being appointed, the Section 9 jurisdiction ought to come to an end, with the jurisdiction under Section 17 of the Act taking over (which vests in the Arbitral

Tribunal the same powers as vested in the Section 9 Court). For the Section 9 Court to continue to exercise jurisdiction, it has to come to a view that *the remedy provided under Section 17* is not efficacious. Therefore, the focus of the jurisdiction is preservation and protection of the subject matter of the arbitration agreement and that sole focus should inform the exercise of the Section 9 jurisdiction.

23. This is why the law declared by the Supreme Court (in ***Ashok Traders***[1]) goes so far as to indicate that a manifest intent to arbitrate is a necessary ingredient of the Section 9 jurisdiction, in the absence of which the Section 9 Court may refrain from granting relief or even vacate reliefs, if there are no real arbitration proceedings in sight. Indeed, when the Section 9 Petition commenced, it was presumed, and rightly so, that the Society had every intention to initiate arbitration proceedings in aid of which, reliefs were sought. It was not until 2024 that the Learned Arbitral Tribunal was constituted. However, once the Arbitral Tribunal has indeed been constituted, the Section 17 jurisdiction has to take over.

24. The range and scope of proceedings under Section 9 are always in aid of arbitral proceedings. The jurisdiction is not a standalone equity jurisdiction but is an equity jurisdiction within the contours of the arbitration agreement. The DA could lend itself to enforcement of its terms – specific relief or

[1] *Firm Ashok Traders And Anr. vs Gurumukh Das Saluja And Ors. -(2004) 3 SCC 155*

damages, all of which would be the subject matter of evidence to be recorded in the arbitral proceedings. Now that the Learned Arbitral Tribunal has indeed been constituted; the Section 17 Application has indeed been filed; the Section 17 Order has indeed been passed; and even the Section 37 Petition has now been filed, the disputes and differences that form the subject matter of the arbitration agreement are well on course and underway in the arbitral proceedings. As a matter of rule of law, there is no basis left for the Section 9 Petition to be continued.

25. Under the arbitration agreement contained in the DA, proceedings are well underway. I see no basis to form a view that the Society's interests cannot be efficaciously considered and protected by the Learned Arbitral Tribunal – it indeed has played its role and has even passed the Section 17 Order. Therefore, in my opinion, the only means of letting the rule of law run its course is to bring to an end the long-standing proceedings under the Section 9 Petition.

Interests Claimed to have been Created:

26. This raises the question of how to adjust for and deal with the various actions that have been taken in the course of the Section 9 Petition. I have considered the submissions made by the advocates in the context of the myriad directions in which various actions taken so far have moved. Mr. Trivedi, the Learned Court Commissioner is anxious of how to handle and

settle his activities if the various Interim Applications are held to be not maintainable, and he has presented a list of questions and issues on which he seeks instructions. Ms. Singhania, whose clients lay store on the pool of money and assets accumulated in the Section 9 proceedings, apprehends that their ability to chase the Developer's assets would be undermined. Mr. Dalal points to promises held out by Tejal himself that he would settle the decree holders within 12 months of the December 2017 Order being vacated and would want the Court to hold him to that promise.

27. Against this backdrop, I have to remind myself that when I sit as the Section 9 Court, I am a creature of the statute under which the powers of this jurisdiction are to be exercised. It is an ordinary civil jurisdiction and one that is created by statute. This jurisdiction is not an extraordinary civil writ jurisdiction where the writ of the Court could run large over members of Society who are not parties to the arbitration agreement. As a matter of law, the law on arbitration has evolved beyond parties to the arbitration with the law on *veritable parties* having been declared with progressive movement – ***Cox and Kings***[2], ***ASF Buildtech***[3], and ***Advaya***[4]. Therefore, one must examine at the least, if the third parties who seek a shoo-in into these proceedings for

[2] *Cox and Kings Ltd. v. SAP India (P) Ltd.* – *(2024) 4 SCC 1*
[3] *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited* - *2025 SCC OnLine SC 1016*
[4] *Adavya Projects Pvt. Ltd. vs. Vishal Structurals Pvt. Ltd. & Ors.* – *2025 SCC Online 806*

execution and enforcement of their rights obtained outside the arbitration agreement, are even remotely veritable parties to the arbitration agreement.

28. For any person to be a *veritable* party, in terms of the law declared in the aforesaid judgements, such non-signatory third party must bring to bear demonstrable proximity to a signatory to the arbitration agreement; either express or implied consent by the signatories to have an arbitrable relationship with such a third party; or a *de facto* connection to the dispute. This may be discernible by commonality of subject matter of dispute covered by the arbitration agreement or nature of relationship with a signatory party where members of the same "group" could be roped in – for example, such third party is a party controlling, controlled by or a party under common control of a party to the arbitration agreement. Privity to another transaction that can be regarded as a composite and integral component of the transaction covered by the arbitration agreement, is also a feature that can be pressed into service.

29. It is in this light that one must examine the multifarious Interim Applications filed in this Section 9 Petition. Applications by decree-holders in completely distinct and separate disputes that have been adjudicated upon and have led to firm and conclusive decrees against the Developer and its partners, are one class of such Interim Applications. These are amenable to execution proceedings applicable to the respective jurisdictions in which the

decrees have been obtained. Tejal has specifically affirmed on oath that if the December 2017 Order is vacated, the payment obligations to the decree holders would be honoured within a period of 12 months since that would enable him to dispose of and realise proceeds from such disposal to honour the decrees.

December 2017 Order:

30. In this context, a quick word on the December 2017 Order would be necessary. By the December 2017 Order, taking serious note of the default under the DA and finding that 37 families had shifted to temporary accommodation relying upon the Developer's promise to redevelop the property belonging to the Society, allowing their residential premises to be demolished, and that too with a promise of monthly compensation which too was defaulted on, the Learned Single Judge was convinced to take stringent action. Despite the Developer having created third-party rights in respect of nine free sale category flats and collecting money from such flat purchasers, the Developer had defaulted in payment of the corpus amount to the Society and the transportation charges, and also failed to provide a bank guarantee, all of which were binding commitments made under the DA. While the Developer promised to make payments after the fourth slab was constructed, he had proceeded no further than carrying out work up to the plinth level. The December 2017 Order took note of other projects too, where there has been a

default. It was noticed that Madhukar and Tejal had been arrested on allegations of cheating flat purchasers in other projects called Akansha Rupji, in Ghatkopar and Rupji Memories, in Parel.

31. It was noticed that Tejal had again been arrested in relation to the very project covered by the Section 9 Petition, and therefore, the Learned Single Judge went on to attach various properties belonging to Madhukar and Tejal. These included three cars, 193 wrist watches, a property in Shivaji Park, Dadar, and a flat in Hindu Colony, Dadar. The Learned Single Judge directed Madhukar and Tejal to make a detailed disclosure of all assets standing in their names and in the names of their immediate family members for past five years, including details of assets disposed of during such period. Disclosures of various bank accounts with bank statements, shareholdings in various companies and partnerships, development and redevelopment projects undertaken in the preceding ten years and disclosure of income tax returns for the previous five years were directed. They were also directed to disclose particulars of all development agreements executed by them in the previous ten years, the amounts collected by them from flat purchasers in each project and the status of each project. All of these are indeed measures that the Section 9 Court can truly consider necessary, and indeed such necessity would be informed by the objective of preserving the subject matter of the DA and nothing else.

32. Paragraph 7(vi) of the December 2017 Order is the primary hurdle perceived by the Developer, which Mr. Jan submits, now has the effect of being counterproductive to the preservation of the DA. This paragraph is extracted below:-

> *"vi. **The Respondent No.1 and its partners are restrained by an order and injunction of this Court from selling, alienating, encumbering, parting with possession and/or creating any third party rights** in respect of **any of their immovable and movable properties** including the shareholding in any Company **or in respect of any plots / flats in the development / redevelopment projects undertaken by them**. They shall also not withdraw from any bank accounts any amounts except for payment of statutory dues until 21st December, 2017, without seeking prior permission of this Court."*
>
> ***[Emphasis Supplied]***

33. It will be seen from the foregoing that the restraint imposed on the Developer, and its partners was wide and expansive, stalling the monetisation of any and every development or redevelopment project handled by the Developer and its partners. While this could have impacted the development and commercial exploitation of other projects, as Mr. Jan would contend, it cannot be forgotten that the Developer was already a defaulter in other projects too.

Directions to the Learned Arbitral Tribunal:

34. However, the question of continued restraint is a matter that now falls in the domain of the Learned Arbitral Tribunal. It is nearly a decade now since

the restraint was imposed and it is for the Learned Arbitral Tribunal, which also now has a clear sense of the scale and size of the Society's claim under the SOC, to decide on whether to continue or do away with the restraint and whether it is still relevant for the matter in hand, taking into account only the interests of the Society and not the world at large.

35. In my opinion, the Section 9 proceedings have now merged into the Section 17 jurisdiction. In this judgement, I propose to iron out some wrinkles in the course of making such integration seamless.

36. The Developer shall approach the Learned Arbitral Tribunal to ask for release of such amounts as are in excess of what is felt necessary by the Learned Arbitral Tribunal for securing the interests of the Society and to preserve the subject matter of the arbitration agreement, bearing in mind the contents of the SOC. Suffice it to say, the amounts lying in Court enure to the benefit of the Society, considering the jurisdiction in which the amounts have been brought to Court is Section 9 of the Act.

37. When one examines the SOC through this prism, it appears that the final reliefs are for the Society to develop its property on its own and to restrain the Developer permanently from claiming any interest in the Society's property. The SOC seeks damages which are quantified and claimed is in the sum of Rs.~18.65 Crores. Indeed, damages cannot be secured in advance, because it would be subject matter of evidence. Yet, there are crystallised

obligations owed under the project covered by the DA such as the payment of property taxes. These are for the Learned Arbitral Tribunal to crystallise and formulate a protection for. Any amount in excess of what the Learned Arbitral Tribunal feels necessary to secure the Society, bearing in mind the subject matter of the arbitration agreement, should not continue to be withheld.

38. The Learned Arbitral Tribunal must examine the security necessary purely from the perspective of the Society and not continue the review of the factual matrix from the perspective of other projects, creditors and counterparties to other contracts with the Developer. Once the Learned Arbitral Tribunal is convinced of the scale of funds and assets needed to be secured, solely bearing in mind the interests of the subject matter of the arbitration agreement, the balance amounts lying in Court shall be released to the Developer. At this stage, all that this Court needs to observe is that the Society's Section 17 Application is primarily for payment of certain amounts owed to MCGM from the amounts lying in Court to enable the Society to proceed with its own redevelopment, for which it has even received the Intimation of Disapproval. Therefore, what is the surplus amount for purposes of the arbitration proceedings is squarely capable of being assessed by the Learned Arbitral Tribunal in exercise of the Section 17 jurisdiction.

39. The appropriate forum for any reconsideration of the December 2017 Order, needless to emphasise, is the Learned Arbitral Tribunal. The Learned

Arbitral Tribunal must bear in mind the fact that any restraint imposed or continuation of restraint already imposed must be commensurate with and relevant for protection of the subject matter of the arbitration agreement in the DA, and not be influenced by third party rights and claims that have been made in the course of multiple third party interim applications in this Court in the course of conduct of the Section 9 Petition.

40. I am conscious that such a decision by the Learned Arbitral Tribunal would in any case, take time. However, the Learned Arbitral Tribunal is requested to examine this facet of the matter as expeditiously as possible, and preferably within a period of three months from the upload of this judgement on the Court's website.

Decree-Holder Applicants:

41. In the interregnum, there would be adequate time for the other parties such as the decree-holders to approach other appropriate forums to secure their interests and take appropriate orders from the respective execution courts. It is made clear that the amounts lying in Court now can only be for the benefit of the Society and none other, since the very foundation of the jurisdiction involved is Section 9 for which privity to the arbitration agreement is a foundational requirement.

42. Considering the history of what has transpired in the matter, the aforesaid working arrangement would enable such parties too to take necessary and appropriate action as advised, in appropriate forums that may indeed have jurisdiction, without having to rely on Section 9 proceedings in relation to an arbitration agreement with which they have nothing to do with. Once the Learned Arbitral Tribunal determines how much of the amounts lying in Court are a surplus from the perspective of what is needed for the Society's interests, the balance must necessarily yield back to the Developer and its partners.

43. I am conscious of the timeline of 12 months committed by Tejal in the affidavit filed in these proceedings and reiterated by Mr. Jan in his submissions in these proceedings. This would fall in the domain of a voluntary undertaking and whether such undertaking is complied with or not would at best fall in the domain of the contempt jurisdiction, if the undertaking given to this Court is not met. Towards this end, the period of 12 months for honouring the obligations owed to the decree-holders will commence immediately upon the Learned Arbitral Tribunal pronouncing upon how much of the amounts lying in Court is necessary to protect the Society's claims. This would enable computation of limitation from the perspective of contempt jurisdiction.

44. The decree-holders shall also have the ability and indeed the liberty to present the facet of commitment of 12 months made on oath by Tejal, to the respective execution courts, which may pass such protective orders as the execution jurisdiction permits. The timeline of three months in the aforesaid arrangement gives enough time to the decree-holders to secure such orders as may be permissible and be obtained in accordance with law. It is made clear that the amounts deposited in this Court under the jurisdiction of Section 9 can only be for the benefit of the Society and any direction to pay any component from it for anything not related to the Society's development, can only relate to the amounts declared as surplus by the Learned Arbitral Tribunal.

45. I am unable to appreciate Ms. Singhania's contention about the Society not having pursued the constitution of the Learned Arbitral Tribunal diligently, in a manner that it could lead to any entitlement to third parties, such as her client to file interim applications to chase the assets deposited in this Court. The very genesis of this Court having any jurisdiction is under Section 9 of the Act. The foundational premise of such jurisdiction has already been discussed above. The Society's delay in having the Arbitral Tribunal constituted could only erode the very jurisdiction to have an increasing range of activities in the nature of execution, enforcement and liquidation being carried out in the Section 9 jurisdiction.

46. As analysed above, a delay in constitution of the Arbitral Tribunal after grant of relief under Section 9 could only lead to the vacation of the relief, ordinarily on expiry of 90 days. The Court has discretion to extend it for a longer period of time and in this case, it has been done for years. Eventually, the Learned Arbitral Tribunal came to be constituted in 2024. That having been done, the law must run its course. Any activity outside the scope of Section 9, which is the very jurisdiction under which the Court gets to exercise any power in these proceedings, would in fact become a case of coram non judice. Now that the Arbitral Tribunal has been formed, the provisions of Section 9 that make it inappropriate for the Section 9 Court to continue to exercise jurisdiction must be respected as a matter of rule of law.

47. This is precisely why I have issued the directions set out earlier in this judgement, enabling Applicants such as these to take up appropriate proceedings in appropriate jurisdictions available to them in law. The Section 9 jurisdiction is now not available any longer since the proceedings have now moved into the Section 17 jurisdiction and it is now high time the focus of the jurisdiction is kept on the subject matter of the DA, which houses the arbitration agreement.

48. With the aforesaid directions, all the Interim Applications by decree-holders (namely, (i) ***IA 2365***; (ii) ***IA 19656***; (iii) ***IA 24824***; (iv) ***IA 7108***; and (iv) ***IA 1912***) are ***finally disposed of*** in the aforesaid terms. The request for

intervention by these parties cannot extend to their participation in the arbitration proceedings pursuant to the arbitration agreement contained in the DA. These Applicants may take up appropriate proceedings in appropriate forums that have jurisdiction to grant the reliefs they seek, as advised.

Other Third-Party Applicants:

49. The next batch of Interim Applications are those filed by other third parties who do not hold any decrees from other forums. None of these parties have any privity to the arbitration agreement even as *veritable* parties. Every creditor to whom a party to an arbitration agreement in a bilateral contract owes funds, would not become a veritable party to such arbitration agreement. The arbitration agreement in the DA is solely between the Developer and the Society. Now that arbitration is underway, I find it impermissible to hold in any blanket manner that they have any subject matter commonality with the DA and the arbitration agreement contained therein.

50. It is made clear that these parties who are flat purchasers, allottees, tenants and counterparties of the Developer in relation to projects other than what is covered by DA are complete third parties with no privity to the arbitration agreement contained in the DA. There is no question of permitting them to intervene in the Section 9 proceedings or to carry it forward into the Section 17 proceedings. Each of such parties, including parties who have executed and registered flat purchase agreements with the Developer in the

very same project as covered by DA, must have recourse through the avenues available to them in accordance with law. Since acts of Court can prejudice no one, and having regard to the traction these parties have had before the Learned Arbitral Tribunal was constituted, in exercise of inherent powers of the Court, it is held that the time spent engaged in these proceedings related to the Section 9 Petition shall be regarded as time spent *bona fide* in this forum, for purposes of computation of limitation in respect of their claims.

51. Therefore, the request for intervention in the Section 9 Petition made in all these other Interim Applications (namely, (i) ***IA 217***; (ii) ***IA 688***; (iii) ***IA 40***; (iv) ***IA 234***; (v) ***IA 37939***; (vi) ***IA 763***; (vii) ***IA 1080***; (viii) ***IA 32***; (ix) ***IA 50***; (x) ***IA 32205***; (xi) ***IA 8065***; (xii) ***IA 32962***; and (xiii) ***IA 8210***) stands rejected.

52. Each of these Applicants is free to take up such proceedings as advised and available to them in law. All these Interim Applications are ***finally disposed of*** in the aforesaid times.

Developer Family's Applications:

53. While Priyanka and the offspring with Tejal are said to be engaged in Family Court proceedings, Mr. Jan does submit that these could be withdrawn. I do not intend to comment on these Interim Applications, including on their veracity on facts. Suffice it to say, as a matter of law, Priyanka and the offspring have no privity to the arbitration agreement and

are as much third parties to the same; they are not veritable parties as far as their request to intervene in the Section 9 Petition and pursue their own claims within the ambit of the arbitration proceedings is concerned. If they have any claims to make against Tejal or his assets forming part of the Developer's assets, it is for them to approach an appropriate forum that indeed has jurisdiction.

54. The Section 9 jurisdiction rooted in the arbitration agreement between the Developer and the Society as contained in the DA. is not for family members of partners of the Developer to tap into. I note that Mr. Jan has instructions to commit to withdraw these Interim Applications, which sought to bring in intra-family disputes into the Section 9 proceedings. All these Interim Applications (namely (i) ***IA 45***; (ii) ***IA 12903***; (iii) ***IA 23486***) are also ***finally disposed of*** as withdrawn, and without permitting them to intervene. Needless to say, the only comment being made is that the disputes raised in these Interim Applications seeking to lay hands on the amounts deposited in Court under the Section 9 Petition would need to meet the same fate as the other Interim Applications filed by third parties who are unconnected to, and have no nexus whatsoever with the subject matter of the arbitration agreement.

Society's Applications:

55. IA 350, seeking relief for sale of the Mahul Property, and IA 410 seeking release of funds towards payment of MCGM dues, are the Society's Interim Applications in the Section 9 Petition. These are subsumed in the Section 17 proceedings. Should any facet remain in this regard, the Society may pursue the same with the Learned Arbitral Tribunal in accordance with law.

56. Suffice it to say, I find it impossible for the Section 9 Court to enable leading of evidence and conduct a mini trial about the veracity of ownership interests over the Mahul Property or conduct an auction for its sale and to realise proceeds. All questions of fact and law in this regard are left open to the relevant forums that may have jurisdiction, including the Learned Arbitral Tribunal and any execution court depending on any ruling by the Learned Arbitral Tribunal.

57. Therefore, ***IA 350*** and ***IA 410*** too are ***finally disposed of*** without any intervention, leaving them entirely to the Learned Arbitral Tribunal for consideration. It is clarified for the avoidance of doubt, that events have overtaken the committee formed for purposes of the sale of the Mahul Property or the development under the DA. It is common ground that the DA stands terminated, the Society has gone in for self-development and has even received the statutory Intimation of Disapproval on September 15, 2025, and

only payment of property taxes due to MCGM have to be made to enable the Society to move forward. Indeed, the Section 17 Application primarily seeks securing amounts payable to MCGM from the amounts lying in Court.

58. Therefore, it is made clear that the committee created in the course of these proceedings stands disbanded. In any case, it would entirely be open to the Learned Arbitral Tribunal to deal with these aspects should the need arise in the course of conduct of the arbitration proceedings.

Developer's Applications:

59. Mr. Jan has submitted that he has instructions to withdraw IA 1929 (for release of legal fees from the amounts deposited in Court) and IA 2136 (for recall of the December 2017 Order and to permit sales in other projects). These are disposed of as withdrawn. As stated above, any variation of the December 2017 Order falls in the ambit of the Learned Arbitral Tribunal and the Developer may pursue that relief in that forum.

60. IA 1938, too is infructuous and has been overtaken by events that have transpired in the arbitration proceedings. In fact, an Arbitral Tribunal has been appointed and the termination is one of the grounds on which the release of the amounts deposited in Court is sought, since the claim is now a matter of assessment of damages.

61. Therefore, these three Interim Applications are ***finally disposed of*** - ***IA 1929*** as ***withdrawn***; ***IA 2136***, with liberty to approach the Learned Arbitral Tribunal, and ***IA 1938*** as ***infructuous***.

MCGM Application:

62. IA 3390 is filed by MCGM seeking to withdraw amounts deposited in this Court in the Section 9 proceedings towards dues claimed by MCGM. This is a rather remarkable development, inasmuch as MCGM was made a party by the Society only because MCGM would have had the power to auction the Society's property on the ground that the Developer had not discharged the dues owed towards property tax. While such joinder would enable MCGM to present its say as a third party that would be affected by potential interim measures under Section 9, by no stretch can it be contended that MCGM may also start filing its own Interim Applications in the Section 9 Petition asking for a positive prayer to have amounts deposited in aid of arbitration proceedings being released by it.

63. Any recoveries that MCGM seeks to make would need to be in accordance with procedures known to law for a Municipal Authority to recover its dues. MCGM too having no nexus or connection with the arbitration agreement, ***IA 3390***, which is misconceived, deserves to meet the same fate and is ***dismissed***.

2026 Applications:

64. The relentless proliferation of Interim Applications in the Section 9 Petition has continued this year too, after the hearing was concluded. These are:

A] Interim Application (L) No. 10227 of 2026 ("***IA 10227***") is an application filed by the Developer seeking a full and clear disclosure of all documents, assets and other material with the Learned Court Commissioner. In view of the directions issued below, IA 10227 would stand disposed of;

B] Interim Application (L) No. 11413 of 2026 ("***IA 11413***") is an application filed by the Developer, yet again seeking to vacate the December 2017 Order;

C] Interim Application (L) No. 10988 of 2026 (***"IA 10988"***) is an application by 14 Applicants seeking permission to intervene in the Section 9 Petition and seeking to withdraw funds from the amounts lying in Court to offset the amounts paid by them for a project in another property;

D] Interim Application (L) No. 10632 of 2026 ("***IA 10632***") is an interim application seeking release of funds from the amounts available

with this Court towards discharge of a decree obtained from the National Consumer Disputes Redressal Commission;

65. None of the aforesaid applications have been moved after being filed. In view of my ruling on the Section 9 Petition, all these Applications stand dismissed. ***IA 10227*** and ***IA 11413*** are inexplicable. The Learned Arbitral Tribunal having been constituted, any motion of this nature would lie in the arbitration proceedings. There is nothing to indicate that these applications cannot be efficaciously handled by the Learned Arbitral Tribunal. These applications are ***dismissed***.

66. ***IA 10988*** and ***IA 10632*** too are inexplicable. Adding more to the pile of misconceived applications in the pending proceedings, these applications must meet the same fate as the other applications filed by third parties without any nexus or connection to the arbitration agreement. For the very same reasons, they too are ***dismissed***.

Other Directions:

67. Mr. Trivedi, the Learned Court Commissioner has submitted a list of issues on which he would need instructions since he has conducted multiple actions under the oversight of this Court. The Learned Court Commissioner is in possession of various documents and properties which are stored in the Court's premises. Therefore, considering my judgement on the way forward, it

is vital to ensure that the Learned Court Commissioner hands over all documents, properties and other material in his possession in discharge of the duties and responsibilities assigned to him in the past in the course of these proceedings to the Registry of this Court.

68. The Prothonotary and Senior Master shall designate within ***seven working days*** of the upload of this judgement on the Court's website, a senior and responsible officer to take charge of all documents and materials from Mr. Trivedi. Such officer shall be the official Court Commissioner currently working in the Registry. The newly designated Commissioner and Mr. Trivedi shall prepare a joint handover report and submit the same to the Learned Arbitral Tribunal, to enable a clear picture being available to the Arbitral Tribunal about the nature, scale and scope of what is lying in Court.

69. I am conscious that Mr. Trivedi has put in serious efforts and has discharged the directions received in the matter from time to time. Towards this end, Mr. Trivedi shall be paid a sum of Rs. 2,50,000 from the amounts deposited in Court to defray his fees and expenses incurred in the matter, which shall be paid upon completion of smooth handover as above. The Learned Court Commissioner's efforts are appreciated. It's now time for the Learned Arbitral Tribunal to take over the Section 9 proceedings as proceedings under Section 17 of the Act, bearing in mind the contours of the

jurisdiction and the privity of who are the parties to the arbitration agreement under which the Learned Arbitral Tribunal has been constituted.

70. To summarise:

A] All Interim Applications filed by third parties who have no privity of contract with the DA and thereby none to the arbitration agreement contained therein are disposed of without permitting their intervention into the Section 9 Petition;

B] All the Applicants in these Interim Applications have liberty to take up such proceedings as advised and as available to them in accordance with law;

C] The Learned Arbitral Tribunal shall assess what precise amounts, if any, are required to be kept aside from the amounts lying in Court in aid of, and to preserve and protect the subject matter of the arbitration agreement contained in the DA. Such assessment shall be completed preferably within a period of three months from the upload of this judgement on the Court's website;

D] Any surplus over and above what the Learned Arbitral Tribunal determines needs to be retained to abide by the outcome of the arbitral proceedings, as lying in Court shall be released to the Developer, subject, of course to any directions and orders that may be obtained by

the third party applicants in the Interim Applications disposed of, from such other forums as may have jurisdiction in the matter;

E] The Learned Arbitral Tribunal shall also rule on the need, if any, for restraint imposed on the Developer in the December 2017 Order, to continue or to be vacated. The Learned Arbitral Tribunal shall be at liberty to vary such restraint in such manner as appears necessary to it, in accordance with law and bearing in mind the scope of protection being linked solely to the subject matter of the arbitration agreement, which is the instrument under which the Learned Arbitral Tribunal has jurisdiction;

F] Tejal shall abide by the undertakings given to this Court in his affidavit and also through instructions to Mr. Jan committing to discharge the amounts owed to the decree holders within 12 months of any release as may be ordered by the Learned Arbitral Tribunal; and

G] The Prothonotary and Senior Master of this Court shall designate within a seven working days of upload of this judgement, an official Court Commissioner who shall take over and take charge of all the matters handled by Mr. Trivedi so far and file a joint handover report. Upon completion of a smooth handover, Mr. Trivedi shall be paid an amount of Rs. 2,50,000/- towards fees and costs for his work done so far in the matter from the amounts lying in Court;

71. With the aforesaid detailed directions, the Section 9 Petition along with all Interim Applications filed in it, shall stand ***finally disposed of***.

72. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]