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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 198 OF 2023

Manish Narendra Parekh
Partner of Lala Builders and Developers
A partnership firm, having its office at
Flat No. 25/26, Ambajidham Building,
7th Floor, Factory Lane, Near Gokhale
School, Borivali(W), Mumbai-400 092 …. Petitioner

Versus

1. Rishiram Galtiram Bhatt
of Mumbai, Indian inhabitant
residing at Flat No.9, 1st Floor,
Mathura Vihar, A-Wing, SVP Road,
Opposite Bhagwati Hospital, Borivali(W)
Mumbai – 400 092

2. Dinesh D. Soni,
of Mumbai, Indian inhabitant,
residing at Pranav Vidya Building,
Flat No. 902, 9th Floor, Borsapada
Road, Opposite Pawar Public School
Kandivali(W), Mumbai- 400 067. ... Respondents

Mr. Atul Damle, Senior Advcate a/w. Viraj Jadahv a/w. Ms. Disha Jain i/b. Kevin Pereira for Petitioner.

Mr. Karl Tamboly i/b. Mr. Nitin G. Raut for Respondent No.1.

CORAM : GAURI GODSE, J.

RESERVED ON : 19th DECEMBER 2025

PRONOUNCED ON : 30th APRIL 2026

JUDGMENT :-

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) by the original claimant to challenge the award dated 30th December 2020 dismissing the claim, passed by the Arbitral Tribunal consisting of a sole arbitrator. The arbitral claim was for specific performance of a Development Agreement dated 8th December 2011 and, in the alternative, for damages.

BASIC FACTS PLEADED BY THE PETITIONER:

2. Respondent no. 1 is the owner of an immovable property at Borivali, being Final Plot No.24 (Part), Off. TPS I, Borivali, bearing CTS No. 2413/21/1 to 19 situated at Village Eksar, Tal. Borivali, consisting of two structures on the said property, one being an old tenanted building named "Rishiram Nagar" and the other a building named "Prem Kutir" owned by a society. ("the said property").

According to the petitioner, respondent no. 1 was interested in developing his property; hence, there were negotiations between the petitioner and respondent no. 1 in the presence of respondent no. 2 to develop the property by demolishing the old structures and thereby constructing a new building thereon. It was agreed that the entire redevelopment work shall be carried out by the petitioner at his own cost, and thereafter, the petitioner shall provide 48% of the area to respondent no. 1 towards consideration for the said development rights. The terms and conditions were discussed, finalised, and agreed upon by the parties. Accordingly, a development agreement dated 8th December 2011("the said agreement") was executed in the presence of respondent no. 2. It was mutually agreed that in the event there is any dispute, then in that case, the matter will be referred to respondent no. 2 for arbitration as per clause 40 of the said agreement.

3. At the time of execution of the said agreement, respondent no.1 insisted that the original agreement executed between the parties be kept with respondent no.2, and respondent no. 2 agreed to hand over the same to the petitioner. Two original agreements were

executed, one for the petitioner and one for respondent no. 1. Both were kept with respondent no. 2, with an assurance that they would be handed over to the petitioner. However, when requested to hand over the original agreement for adjudication, respondent no. 2 informed that the petitioner should first find out the amount of stamp duty payable, and at the time of payment of stamp duty and registration, he shall bring the original agreement and hand it over to the petitioner for registration.

4. As per the terms and conditions of the said agreement, the petitioner had agreed to negotiate and reach agreements with the tenants and respondent no. 1 had agreed to coordinate and cooperate to get the agreements executed with the tenants and the owners of the flats in Prem Kutir Building. Respondent no. 1 had agreed to obtain consent from the owner of the flats in Prem Kutir building at his own cost. The petitioner had agreed to pay monthly rent/compensation and a corpus fund to the said tenants/owners of the flats in Prem Kutir Building. It was respondent no. 1's responsibility to arrive at agreements/arrangements with his relatives who were tenants in respect of 22 rooms, more particularly

set out in Part B of Annexure II annexed to the said agreement, and also to obtain physical possession from the said tenants. As per clause 10 of the said agreement, it was agreed that after deducting the aggregate area for providing permanent alternate accommodation to the tenants and the owners, the balance flats or area in the proposed new building would be shared between the petitioner and respondent no. 1 in the ratio of 52% to the petitioner and 48% to respondent no 1.

5. Under clause 13 of the said agreement, upon receipt of the sanctioned plan and IOD, the parties were to execute a supplementary agreement to demarcate the plans and the premises, for sharing between the petitioner and respondent no. 1. Clause 21 of the said agreement provided that the petitioner would obtain IOD in respect of the new building and would also obtain a commencement certificate upto plinth level. However, the period within which this was to be done was left blank. A photocopy of the said agreement, produced before the learned arbitrator, contains the signatures of the parties, including respondent no.2 as a witness to the execution of the document.

6. In December 2012, respondents suddenly began avoiding the petitioner and the original agreement was not handed over to the petitioner. The petitioner, therefore, by his advocate's letter dated 9th December 2012 and 28th January 2013, called upon respondent no. 2 to hand over the original agreement and also arrange an immediate meeting as an Arbitrator to resolve the issue. Respondent no. 2, however, by his advocate's letter dated 25th February 2013, denied the petitioner's claim.

7. The petitioner, thereafter, by his advocate's letter dated 7th February 2013, called upon respondent no. 1 to comply with his obligations under the said agreement. Respondent no. 1, however, by his advocate's letter dated 27th February 2013, denied the petitioner's claim. In the meantime, the petitioner also gave public notice on 9th January 2013, inter alia, warning the public at large not to deal with respondent no. 1 regarding the said property.

8. Hence, the arbitration clause was invoked, and an application under Section 11 of the Arbitration Act was filed, and this Court appointed the sole arbitrator.

RESPONDENT NO. 1'S DEFENCE:

9. The main defence of respondent no. 1 is that there was no concluded contract and that no consideration was paid for the said agreement. The original draft agreement was destroyed in the petitioner's presence with mutual consent. The petitioner failed and neglected to comply with the obligations under the agreement, and, more specifically, clause 4, which required the petitioner to negotiate and arrange agreements with the tenants and the owners of the flats. The alleged agreement was agreed to be kept with respondent no. 2 as the terms, such as consideration, time completion, bank guarantee, and deposits, were to be discussed and were to be finalised between the petitioner and respondent no. 1. It was on the petitioner's suggestion that the agreement was kept with respondent no. 2, pending the finalisation of all the terms. Thus, there was no concluded contract between the parties.

RESPONDENT NO. 2' DEFENCE:

10. It is alleged by respondent no. 2 that the petitioner had failed to perform his obligation of obtaining consent from the members of the society, due to which respondent no. 1 was not willing to proceed

further and wanted to terminate the said agreement. It was mutually agreed between the petitioner and respondent no. 1 to destroy the original agreement, and the same was done in their presence. Respondent no. 2 tried to resolve the disputes between the petitioner and respondent no. 1, but a settlement could not be reached, and the parties therefore agreed to destroy the original and the duplicate agreement and, in fact, destroyed the same.

SUBMISSIONS ON BEHALF OF PETITIONER:

11. The learned senior counsel for the petitioner submitted that the execution of the development agreement is admitted. The defence by respondent no. 1 is that the document was destroyed. However, destroying a document will not end the agreement between the parties. Respondent no. 1 came up with the theory of escrow for the first time in the evidence. Therefore, the findings on the plea of escrow, unsupported by any pleadings, are perverse. When execution of the agreement is not disputed, mere destruction of the document will not end the contract between the parties. The learned arbitrator has wrongly applied the principles in ***Jeweltouch (India) Pvt Ltd Vs. Naheed Hafeez Quraishi(Patrawala) and Ors[1].***

1 (2008) 3 Mah LJ 54

12. All the terms and conditions between the parties were agreed upon and recorded in the document. Hence, a few blanks in the agreement regarding the timelines would make no difference. A few blanks in the agreement would not mean that the contract between the parties was not concluded. In view of clauses 4 and 5 of the agreement, the findings on readiness and willingness are erroneous. The learned arbitrator has not considered the evidence of the three witnesses.

13. The impugned Award is therefore in conflict with the public policy of India and the most basic notions of morality and justice. Hence, the impugned Award is liable to be set aside as per Section 34(2)(b)(ii) of the Arbitration Act, read with Explanation.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1:

14. Mere signing an agreement will not make it a concluded contract. Admittedly, the agreement was with respondent no. 2. Therefore, even if the word 'escrow' is not used, keeping the agreement with respondent no. 2 by mutual consent would amount to keeping it in escrow. Based on the pleadings and the evidence on record, the learned Arbitrator has recorded findings of fact. No

perversity in the findings is pointed out by the petitioner; hence, no interference is warranted under Section 34 of the Arbitration Act.

15. Even otherwise, if the prayer for specific performance is to be considered by assuming the existence of a concluded contract, the petitioner has failed to satisfactorily plead and prove readiness and willingness. The petitioner took no steps for more than a year to comply with his obligations to pay the stamp duty and get the agreement registered. After the said agreement was destroyed, respondent no. 1 entered into a Development Agreement dated 31st December 2012 with one M/s. Abhinandan Realty and has received an interest free security deposit of Rs. 1.62 crores from the said party. The grounds raised on behalf of the petitioner would amount to reappreciation of the evidence, which is not permissible in a Section 34 petition.

16. To support his submissions, learned counsel for respondent no. 1 relied upon the decisions in ***C & C Constructions Limited Vs. Ircon International Limited***[2], and ***P. Ravindranath and Another Vs. Sasikala and Others***[3]

2 (2025) 4 SCC 234
3 2024 SCC Online SC 1749

ANALYSIS AND CONCLUSIONS:

17. The learned Arbitrator, on relying upon the oral evidence, held that the two original agreements signed by the petitioner and respondent no. 1 were kept in escrow with respondent no. 2 and were not released; hence, the development agreement never came into existence. It is further held that the said agreement is either destroyed or still in escrow. Hence, no contract has been concluded. It is thus held that the petitioner failed to prove the existence of any concluded contract.

18. The learned Arbitrator perused the terms and conditions of the agreement and held that the parties had not agreed upon the timelines for completion of the project. Thus, it is further held that, in the absence of all the vital terms of the contract agreed upon between the parties, it is not possible to hold that there was a concluded contract between the parties. The petitioner did not make any attempts to get the original agreement produced before the tribunal; hence, it is held that there was a strong possibility that the agreement was destroyed with the consent of the parties.

Therefore, it is held that the question of any valid, subsisting and binding contract would not arise.

19. The learned Arbitrator further held that even otherwise, the petitioner failed to plead and prove that he was ready and willing to perform his part of the contract. The terms and conditions of the agreement between the parties, including the steps to be taken to execute the agreement with the tenants and the owners of the flats, are discussed by the learned Arbitrator. After appreciating the oral evidence on record, it is held that the petitioner failed to prove that any steps were taken in furtherance of the contract and readiness and willingness was not proved. The petitioner also failed to prove that he could seek specific performance of the contract against respondent no. 2.

20. The arguments made on behalf of the petitioner concern the performance of the contract's terms and conditions. Nothing is pointed out to show that any findings in the impugned Award are perverse or patently illegal. Although it was argued that the impugned Award is in conflict with the public policy of India and the most basic notions of morality and justice, such an argument is not

supported by any valid ground to say so. The conclusions drawn by the learned Arbitrator are based on the appreciation of evidence. Unless any perversity or patent illegality is noted in recording the conclusions, the findings cannot be interfered with. The arguments made on behalf of the petitioner amount to reappreciation of the evidence, which is impermissible in a Section 34 petition.

21. In ***P. Ravindranath***, the Apex Court confirmed the refusal to grant specific performance by relying upon the well-settled legal principle that, for relief of specific performance, a plaintiff has to prove that, from the outset and until the final decision of the suit, he was ready and willing to perform his part of the contract. It is held that it is the bounden duty of a plaintiff to prove his readiness and willingness by adducing evidence. The decision in ***C & C Constructions Limited*** is on the scope of Section 37 of the Arbitration Act.

22. In ***Jeweltouch (India) Pvt. Ltd.***, this court held that when parties to an agreement place the document in escrow, the act of placing the instrument in escrow evinces an intent that the document would continue to lie in escrow until a condition that is

precedent to the enforceability of the document comes to exist and the instrument becomes valid and enforceable in law only upon the due fulfilment of a prerequisite.

23. In the present case, there is no dispute that the agreement was kept with respondent no. 2. The learned Arbitrator, after appreciating the evidence, has recorded findings that keeping the agreement with the respondent no. 2 would amount to keeping the document in escrow. The learned Arbitrator has also held that nothing was produced on record to show that the document was ever released from escrow. These findings, recorded by the learned Arbitrator, are based on an appreciation of the evidence on record. No illegality or perversity is evident in the findings recorded by the learned Arbitrator. Thus, the prayer for specific performance is rightly refused on the ground that the agreement never came into existence, and thus, there was no concluded contract. Therefore, in the absence of any concluded contract in existence, the petitioner would not be entitled to specific performance of the contract.

24. The conclusion reached by the learned Arbitrator is a reasonable and plausible view. In view of the well-settled legal

principles, the findings recorded by the learned Arbitrator cannot be interfered with by taking a different view on reappreciating the evidence. It is not open to do so in a petition under Section 34, by virtually acting as a court of appeal. It is also a well-settled legal principle that perversity would include patent illegality if the finding is based on no evidence at all, if an award ignores vital evidence, or if a finding is based on documents taken behind the back of the parties. In the present case, the learned Arbitrator has considered the entire evidence. Thus, none of the grounds raised by the petitioner is within the limited scope of interference under Section 34.

25. The law on the scope of interference in the Section 34 petition is no longer res integra. In multiple decisions of the Apex Court, it is held that the Section 34 Court must not lightly interfere with arbitral awards in a casual and cavalier manner, unless a conclusion can be drawn that the award suffers from perversity and patent illegality that goes to the root of the matter. The Apex Court has held in various decisions that the mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy

to get their dispute adjudicated by an alternative forum as provided under the law.

26. In the present case, the conclusions of the learned Arbitrator are based on a possible view and do not warrant any interference. There is no ground to set aside the award under the limited scope of Section 34 of the Arbitration Act. Hence, no interference is called for in the impugned Award.

27. For the reasons recorded above, the petition is dismissed.

(GAURI GODSE, J.)