

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 13286 OF 2026

Bhoomipujan Prime Builders LLP

and Anr.

.....PETITIONERS

: **VERSUS** :

Al Masina Enterprises and Ors.

...RESPONDENTS

Mr. Sharan Jagtiani, Senior Advocate with Ms. Avanti Divan and Mr. Sohan Kinkhambwala i/b Mr. Parth P. Shah for the Petitioners.

Mr. Vishal Kanade with Mr. Bharat Jain and Mr. Sanyam Jain i/b Mr. Bharatkumar L. Jain for Respondent No.1.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 27 APRIL 2026

PRONOUNCED ON: 30 APRIL 2026

JUDGMENT:

1) This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings. By way of present Petition, Petitioners seek stay on the implementation of registered Development Agreement (**DA**) dated 5 January 2026 executed by Respondent No.1 in favour of new developer (Respondent No.6) as well as stay on termination

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notice dated 9 February 2026. The Petitioners have also sought appointment of court receiver in respect of the subject building.

2) Masina Building comprising of A, B, and C wings, situated at 68/70, Mirza Ghalib Marg (Clare Road), bearing Cadastral Survey No.240 of Byculla Division, Mumbai, admeasuring about 1123 sq. mtrs. is the '**subject property**'. Al-Masina Enterprises (Respondent No.1) is a proprietary concern of Mohd. Rasul Mirza Hussain Ismaili, who is the owner of the subject property. Respondent Nos.2 to 5 are the children of the proprietor, Mohd. Rasul Mirza Hussain Ismaili. Mr. Mohd. Rasul Mirza Hussain Ismaili issued power of Attorney dated 9 March 2015, appointing his son-Respondent No.2 to deal with the subject property.

3) Petitioners are engaged in business *inter alia* of construction and development of properties. In the year 2021, Respondent No.2 approached the Petitioners with the proposal for redevelopment of the subject property. Accordingly, a Memorandum of Understanding dated 14 October 2021 was executed between Respondent No.1 and Petitioner No.2, under which Respondent No.1 agreed to grant development rights over the subject property to Petitioner No.2 on monetary consideration of Rs.1.89 crores in addition to 15% constructed area. According to the Petitioners, they started taking steps for mutation of name of Respondent No.1 in respect of the subject property. Thereafter, Agreement for Sale dated 9 September 2022 was executed between Petitioner No.1 and Respondent No.1, under which subject property was agreed to be sold for total consideration of Rs.5.40 crores. Respondent No.1 also executed

specific Power of Attorney dated 9 September 2022 in favour of partners of Petitioner No.1. Side letter dated 9 September 2022 was executed in favour of Respondent No.1 under which Petitioner No.1 agreed to deal with disputes relating to the subject property.

4) It is the case of the Petitioners that it has taken various steps for development of the subject property such as mutation of name of Respondent No.1, defending appeals to mutation entry of Respondent No.1, defending litigations before this Court, handling execution petition filed by Respondent No.2, looking after criminal cases lodged against the Respondents, title rectification, settlement with tenants, etc. According to the Petitioners, it has expended an amount of Rs. 3,23,00,000/- for taking various steps as enumerated above. Petitioners have also paid part consideration of Rs.1,10,00,000/- to Respondent Nos.1 and 2 in addition to paying several amounts in cash. It is the case of the Petitioners that amount of Rs.1,80,00,000/- was agreed to be adjusted against total consideration of Rs.5.40 crores and accordingly, the total consideration was mutually reduced to Rs.3.60 crores.

5) Petitioners heard rumours about Respondent Nos.1 and 2 approaching other developers and Notice dated 6 November 2025 was issued invoking arbitration and accordingly Arbitration Application (L) No. 41348 of 2025 was filed for appointment of arbitrator. According to the Petitioners, parties agreed to settle the disputes and draft settlement terms were exchanged. However, Respondent Nos.1 and 2 executed DA with Respondent No.6 on 5 January 2026. Later, Agreement for Sale

executed with the Petitioners was terminated vide notice dated 9 February 2026. Petitioners gave reply dated 10 March 2026 to the termination notice.

6) In the above background, Petitioners have filed the present Petition under Section 9 of the Arbitration Act seeking interim measures in terms of the following prayers:

a) Pending the final hearing and disposal of the Arbitration Proceedings, this Hon'ble Court may be pleased to stay the implementation of the alleged registered Development Agreement dated 05-01-2026 executed by the Respondent no.1 in favour of the said Asma Infra Build Con in respect of the said property.

b) Pending the final hearing and disposal of the Arbitration Proceedings, this Hon'ble Court may be pleased to stay the implementation of the Notice dated 9th February 2026 issued by the Respondent no.1 wrongly cancelling the Agreement for Sale executed with the Petitioner.

c) Pending the final hearing and disposal of the Arbitration Proceedings, the Hon'ble Court may be pleased to appoint a Court Receiver of this Hon'ble Court and/or any fit and proper person in respect of the said property being "Masina Building" situated at 68-70 Mirza Ghalib Marg (Clare Road) Bombay-400008 with all the necessary and requisite powers under Order 40 Rule 1 of the Civil Procedure Code, 1908.

d) Costs of this Petition;

e) For such other and further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice;

7) Respondent No.1 has appeared in the Petition and has filed affidavit in reply opposing the Petition.

8) Mr. Jagtiani, the learned Senior Advocate appearing for the Petitioners submits that Respondent Nos.1 and 2 have illegally entered

into Development Agreement with Respondent No.6 before terminating the Agreement for Sale executed in favour of the Petitioners. That the agreement executed with the Petitioners is not merely for development of the property, but Petitioners are entitled to acquire ownership rights in respect of the subject property. That Petitioners have performed all roles expected of them under the Agreement for Sale. That there were major hurdles in completing the sale transaction on account of non-mutation of name of Respondent No.1 to the revenue records. That further tranche of consideration of Rs.51 lakhs was to be paid only upon mutation of name of Respondent No.1. That mutation of name of Respondent No.1 took a long time and though it was the responsibility of the Respondents to effect mutation entry, the Petitioners were required to spend time and money in getting the mutation in favour of Respondent No.1. He submits that Petitioners have taken several steps towards performance of Agreement for Sale and takes me through the pleadings in para-18 of the Petition. That Petitioners have incurred expenditure of Rs.3.23 crores for taking those steps.

9) Mr. Jagtiani further submits that Respondents did not give a single communication to the Petitioners accusing them of delay. That in the affidavit in reply, reliance is placed on letter dated 7 October 2025, which is not served on the Petitioners. That the letter does not contain any acknowledgment by the Petitioners. That Respondent Nos.1 and 2 have straightaway proceeded to terminate the Agreement for Sale without giving any prior intimation to the Petitioners. That it was the responsibility of Respondent Nos. 1 and 2 to secure consent of the tenants

for redevelopment. He relies on judgment of this Court in *Manisha Kode vs. Mandanlal Desarda*¹ in support of his contention that unilateral cancellation of Agreement for Sale by one party is impermissible in law. That the contract between the parties is not determinable and therefore unilateral termination is impermissible. He also relies on judgment of the Apex Court in *K. S. Manjunath and Ors. vs. Moorasavirappa @ Muttanna Chennappa Batil since decd. by his LRs and Ors.*²

10) Mr. Jagtiani further submits that mere issuance of NOC by MHADA in favour of Respondent No.6 is inconsequential since the termination itself is invalid. That therefore issuance of such NOC cannot be a ground for refusing to grant interim measures in favour of the Petitioners. He therefore submits that *status quo* be directed to be maintained in respect of the subject property either during pendency of arbitral proceedings or at least till the Petitioners get the application under Section 17 of the Arbitration Act decided by the arbitral tribunal.

11) The Petition is opposed by Mr. Kanade, the learned counsel appearing for Respondent No.1. He submits that Petitioners are seeking equitable relief of injunction and therefore under duty to demonstrate compliance with the contractual obligations. That the milestone of mutation of name of Respondent No.1 was completed on 8 November 2023. However, Petitioners failed to pay consideration of Rs.51 lakhs to Respondent Nos.1 and 2. That therefore commission of breaches of

1 Appeal from Order No. 25 of 2023 decided on 2 August 2023.

2 Civil Appeal No. 13507-13508 of 2025 decided on 10 November 2025.

Agreement for Sale by Petitioners is writ large. He relies on letter dated 7 October 2025 addressed on behalf of Respondent No.1 and submits that the letter clearly bears acknowledgment and stamp of Petitioner No.1. That Respondent Nos.1 and 2 had demanded balance consideration of Rs.4.30 crores under the Agreement for Sale, but Petitioners did not even bother to respond to the notice dated 7 October 2025. Referring to Clause 4-ii of Agreement for Sale, Mr. Kanade submits that the consent letters of tenants were required to be given only after receiving demand to that effect from the Petitioners. That Petitioners never demanded consent letters from the tenants.

12) Mr. Kanade further submits that Respondent Nos.1 and 2 have waited for considerable period of time for Petitioners to kick start the redevelopment process. That Respondent Nos.1 and 2 have now appointed Respondent No.6-developer vide registered DA dated 5 January 2026. That more than 70% tenants have consented for redevelopment through Respondent No.6 and MHADA has issued Letter of Intent (LOI) dated 2 February 2026. That in such circumstances, grant of interim measures at this stage would seriously prejudice the interest of Respondent Nos.1 and 2 as well as that of the tenants. That the building is already declared in C-1 category and the same is unsafe for human inhabitation. He accordingly prays for dismissal of the Petition.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) Respondent No.1, who is the owner of subject property, had agreed to sell the same to the Petitioners vide Agreement for Sale dated 9 September 2022, which does not appear to be a registered instrument. It is merely notarised on 19 September 2022. Under the agreement, the subject property was agreed to be sold to the Petitioners for consideration of Rs.5.40 crores. The Agreement indicates that out of the agreed consideration of Rs.5.40 crores, Petitioners paid amount of Rs.1,04,00,000/- to Respondent No. 1 at the time of execution of the agreement. The balance consideration of Rs.4,36,00,000/- was payable on achieving various milestones as under:

| Sr. No. | Amt of instalment (in Rs.) | Remarks |
|--------------|----------------------------|---|
| a) | Rs. 51,00,000/- | Within 3 months after obtaining mutation entry in the property card in the name of Mr. Mohs Rasul Ismaili as proprietor of Al – Masina Enterprise on the property. |
| b) | Rs. 50,00,000/- | Within 3 months after obtaining consent of the tenants for redevelopment (minimum percentage of consent requisite as per the prevailing applicable Laws/ MHADA laws) |
| c) | Rs. 3,35,00,000/- | Within 12 months after mutation entry on the property card and consent from the tenants, whichever is earlier, in the following manner: |
| | | Rs. 59,00,000/- |
| | | Rs. 57,00,000/- |
| | | Rs. 51,00,000/- |
| | | Rs. 52,00,000/- |
| | | Rs. 56,00,000/- |
| | | Rs. 60,00,000/- Upon the Owner obtaining consent affidavit from all his legal heirs that they will not claim any rights on the said property or not to object to the present transaction. |
| TOTAL | Rs. 4,36,00,000/- | |

15) Thus, the Agreement for Sale does not appear to be a simple document for purchase of the subject property. The purchase was clearly linked to redevelopment of the property, which is heavily tenanted. This is a reason why securing of consent of tenants for redevelopment was specifically made a condition precedent for payment of part consideration.

16) The Agreement for Sale also uses the word 'redevelopment'. Thus, the proposed purchase of the subject property vide Agreement for Sale dated 9 September 2022 was essentially for redevelopment of the building. Thus the case does not involve a simple transaction of sale of the property. Petitioners had undertaken the responsibility of redeveloping the building. It is an admitted position that beyond paying initial amount of Rs.1.04 crores, the Petitioners have not paid any further consideration to Respondent Nos.1 and 2.

17) It is the pleaded case of the Petitioners that they have incurred expenditure of Rs.3.23 crores for taking various steps and that therefore, Respondent No.1 agreed to reduce the total consideration to Rs.3.60 crores. This is clear from the pleadings in paras-22 and 23 of the Petition, which read thus:

22. The Petitioners state that, as already mentioned in the foregoing paragraphs, Petitioners had incurred a total amount of Rs.3,23,00,000/- (Rupees Three Crores Twenty-Three Lakhs Only) towards (i) litigations cost- before the SDO, MRT, High Court and Criminal proceedings, (save and except litigations by Salman Poothawala (ii) in rectifying the records of MHADA (iii) pre-development work (iv) tenants' settlement. Out of which, the majority was never Petitioner's liability under the agreements executed between the Parties. It was

all undertaken by the Petitioner in good faith and to help the Respondents. The Petitioner craves leave to refer and rely upon a Ledger maintained by the Petitioner towards the aforesaid cost of Rs.3,23,00,000/-.

23. The Petitioners state that, since Petitioners had already incurred substantial cost towards obligations of the Respondents and had paid monies in cash to the Respondents, the parties negotiated and mutually agreed that Rs.1,80,00,000/- (Rupees One Crore Eight Lacs Only) shall be adjusted from total agreed consideration i.e. Rs.5,40,00,000/-. In view thereof, the total consideration payable was mutually reduced to Rs.3,60,00,000/- (Rupees Three Crores Sixty Lacs Only).

18) The Petitioners have thus raised a pretext of pendency of various issues relating to mutation of name of Respondent No.1 and claims raised by other persons for not completing the transaction of sale. They claim that they were always ready and willing to complete the transaction.

19) Under the Agreement for sale, the first milestone for payment of further consideration of Rs.51 lakhs was within 3 months after obtaining Mutation Entry in the name of Respondent No.1. That milestone was achieved on 8 November 2023, when Mutation Entry was effected in the name of Respondent No.1. This aspect is admitted in their reply to termination notice issued on 10 March 2026. However, within three months of 8 November 2023, the Petitioners have failed to pay agreed amount of Rs.51 lakhs to Respondent Nos.1 and 2.

20) The next milestone was to pay further amount of Rs.50 lakhs within 3 months after obtaining consents of tenants for redevelopment. Under Clause 4-ii of Agreement for Sale, Petitioners were to call upon

Respondent No.1 to obtain consents form the tenants. Clause 4-ii of Agreement for Sale reads thus:

ii. The vendor shall be liable to obtain consent from the tenants for development of the said property in favour of the Purchaser, at the cost of the purchaser, as and **when called upon the Purchaser to do so**. The Purchaser shall provide all assistance as required in respect thereof.

(emphasis added)

21) However, there is nothing on record to indicate that Petitioners ever called upon Respondent No. 1 to secure the consent letters from the tenants. Thus, *prima facie* commission of breaches on the part of the Petitioners in not paying agreed consideration of Rs. 51,00,000/- within 3 months of execution of Mutation Entry dated 8 November 2023 and not calling upon Respondent No.1 to secure consent letters of tenants is writ large.

22) The action of the Petitioners in not paying part consideration of Rs. 51,00,000/- within 3 months of execution of Mutation Entry dated 8 November 2023 is sought to be justified by Mr. Jagtiani by contending that the appeal was preferred against the Mutation Entry and Petitioners were required to defend the said appeal. The Agreement, however, did not stipulate that further consideration of Rs.51,00,000/- was payable only after Mutation Entry attained finality after decision of all proceedings at various hierarchical levels. Therefore, the pretext of pendency of appeals *prima facie* cannot be accepted for justifying the action of the Petitioners in not making payment of Rs. 51,00,000/- within 3 months of certification of Mutation Entry. Having failed to complete the milestone of part

payment of Rs. 51,00,000/- within 3 months from 8 November 2023, there is again no justification for not calling upon Respondent No.1 to secure consent letters from the tenants. This is apparently done to avoid further payment of part consideration of Rs. 50,00,000/- which was payable within 3 months from the date of submission of consent letters. *Prima facie* there appears to be no hesitation on the part of the tenants in cooperating with the redevelopment process as more than 70% of tenants gave consents within a month of execution of DA with Respondent No.6. The DA was executed on 5 January 2026, whereas MHADA has issued LOI in favour of Respondent No.6 (after submission of requisite consents from tenants) on 2 February 2026. If Petitioners were to call upon Respondent No. 1 to secure consent of tenants, the same would have been easily submitted by Respondent No. 1. However since the first milestone of payment of Rs. 51,00,000/- itself was not completed within 3 months of certification of the Mutation Entry, the intentions on the part of Petitioners in not completing the transaction became clear and was further manifested by its conduct of not calling upon Respondent No. 1 to secure tenants' consents to avoid further payment of Rs. 50,00,000/-. Thus commission of breach of terms of Agreement for Sale is *prima facie* established.

23) Considering the above position, it is difficult to record a *prima facie* finding that Petitioners have acted in terms of the Agreement for Sale or were always ready and willing to complete the sale transaction. In that view of the matter, Petitioners are not entitled to secure any

equitable relief of interim measures under Section 9 of the Arbitration Act.

24) Though Petitioners have accused Respondent Nos.1 and 2 of not demanding the balance consideration, Respondent No.1 has relied on letter dated 7 October 2025 demanding balance consideration of Rs.4,30,60,000/-. Petitioners have sought to distance themselves from the said letter contending that they were never served with the same. The letter bears stamp and acknowledgment by partner of Petitioner No.1 of having received the letter on 7 October 2025. Mr. Jagtiani has sought to contend that the acknowledgment is only on a tabular statement and not on the letter itself. However, para-14 of letter dated 7 October 2025 is as under:

14. Payment done by you is attached herewith as Annexure "A" with this notice for your ready reference, further I would like to inform you that on 06/08/2025 my son had handed cash of Rs.5,00,000/- to you, for which you had paid for advocate fees on my behalf to Vikram Sutaria of Rs 3,00,000 and Rs. 2,00,000/- on 28/03/2024.

25) Thus, Annexure 'A' to the letter dated 7 October 2025 is specifically referred to in para-14 thereof. It therefore cannot be contended that the letter dated 7 October 2025 was not received by the Petitioners. In any case, it is an admitted position that Petitioners have not paid a farthing to Respondent No.1 after making initial payment of Rs.1,04,00,000/-. The Agreement for Sale was executed on 9 September 2022 and by now period of almost three and a half years has elapsed. The tenants of the building are not expected to wait endlessly for redevelopment of the building. The building is already classified into C-1

category, which is apparent from the structural audit report forwarded by MCGM to Respondent No.1 on 21 December 2021. It appears that the Executive Engineer, Mumbai Building Repairs and Reconstruction Board (**Repair Board**) has inspected the building on 16 April 2025 and the same is declared to be extremely dangerous and a communication to that effect is issued on 19 January 2026. The Repair Board had directed MCGM to forthwith vacate the building by the said letter dated 19 January 2026.

26) Respondent No.1, who is the owner and landlord of the building, faced a situation where Petitioners did not commence the redevelopment process despite passage of more than three and a half years and the tenants of the building are residing in dangerous conditions. The structural audit report dated 8 April 2025 is placed on record which contains photographs of the building. Those photographs indicate that the building is in extremely dilapidated condition and needs urgent demolition. In such circumstances, Respondent No.1 has taken a decision to appoint another developer for reconstruction of the building. He has accordingly changed the developer by executing registered DA dated 5 January 2026. Respondent No.6 has acted with necessary alacrity and after securing consents of the tenants, it has been able to secure LOI from the Repair Board (MHADA) on 2 February 2026. If at this stage interim measures are granted in favour of the Petitioners, the same would put the redevelopment process in jeopardy thereby endangering the lives of the tenants residing in the building. What is at stake for the Petitioners is the profit motive as compared to the safety of tenants residing in the old and dilapidated building. The latter must prevail over the former.

Petitioners' claims for damages can be adjudicated by the arbitral tribunal and if it is proved that the Petitioners have acted in terms of the Agreement for Sale and the termination is wrongful, the Petitioners can be adequately compensated. However, there is no warrant for withholding the redevelopment process. The Petitioner would not suffer irreparable loss. The balance of convenience is also heavily tilted against the Petitioners. In my view therefore, no case is made out for grant of interim measures in favour of the Petitioners.

27) Reliance by Mr. Jagtiani on the judgment of Apex Court in *K. S. Manjunath* (supra) and of this Court in *Manisha Kode* (supra) is inapposite for the purpose of deciding the issue of interim measures. Whether termination of Agreement for Sale is valid or not can be decided at the end of arbitral proceedings. This Court has already arrived at a *prima facie* finding that Petitioners have committed breaches of the Agreement for Sale. In that view of the matter, *prima facie* it cannot be countenanced that despite commission of breaches by the Petitioners, the Agreement cannot be terminated. Considering the above position, no case is made out for grant of any interim measures in favour of the Petitioners.

28) Arbitration Petition is accordingly dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]