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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 126 OF 2023

M/s. Om Sri Maa Shakti I Namah
A Partnership firm duly registered
under the provisions of
Indian Partnership Act, 1932
and having its principal place of
Business at Shop No. 8, Saloni Apts.
TPS 56th Road, Borivali (West), Mumbai 400 092
Represented by its Authorised
Representative Mr. Prashant K. Doshi … Petitioner

Versus

Marve Co-operative Housing Society Ltd.
A society registered under the Maharashtra
Co-operative Societies Act, 1960
and having its office at Marve Road,
Malad (W), Mumbai-400 064 … Respondent

Mr. Bhavin Gada, Mr. Ameet Mehta, Mr. Nirav Marjadi, Ms. Srushti Mehta, Mr. Kushal Harnesha i/b. Solicis Lex for the Petitioner.

Mr. Gauraj Shah a/w. Mr. V. A. Joshi, Mr. Vir Patel i/b. Chitnis Vaithy and Co.for the Respondent.

CORAM : GAURI GODSE, J.

RESERVED ON: 22nd DECEMBER 2025

PRONOUNCED ON: 5th MAY 2026

RAJESHWARI RAMESH PILLAI
Digitally signed by RAJESHWARI RAMESH PILLAI
Date: 2026.05.05 16:10:38 +0530

JUDGMENT:

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), for setting aside the Arbitral Award dated 11th July 2022, passed by the Sole Arbitrator, dismissing the petitioner's claim for specific performance, challenging the termination of the development agreement, and partly allowing the counterclaim of the respondent. The claimant is directed to pay to the respondent the amount received from the members for the additional area.

Facts In Brief Pleaded By The Claimant:

2. The respondent society negotiated with the petitioner and entered into a Development Agreement, under which all members were to be provided with 7% of the area over and above the area occupied by them in the old building. The members also insisted on the upfront payment of the entire corpus fund to the society, amounting to Rs. 24 Lakhs, which has been duly paid. Thereafter, the respondent, by following due process of law, duly appointed the petitioner by passing a

unanimous resolution, to redevelop the building of the respondent.

3. The building of the said society was constructed sometime in the year 1973. There are 21 members who have 22 flats (one member has two flats with one share certificate) in the old building, on ground plus four upper floors, without a lift. On average, each flat had 380 sq. ft. of carpet area. The petitioner, in pursuance of said Development Agreement, initiated various steps by offering rent to the members of the respondent and, upon obtaining various approvals from MCGM, started construction on the said property. Until the stoppage of work, the petitioner had incurred a sum of approximately Rs. 18,00,00,000/- towards the redevelopment process and had reached the construction of the ground + five upper floors.

4. As per the Development Agreement, the area assigned for redevelopment was about 1239.3 square metres, but upon conducting enquiry, the petitioner came to know that the area of the plot as per the MCGM record was 1309.3 square metres, but out of this area, certain area had been

surrendered for construction of road on two occasions, thereby leaving behind a net area of 892.30 square meters which was available for the purpose of redevelopment. On 1st March 2013, IOD was issued, and the petitioner made an application for a commencement certificate on 28th December 2011. On 7th June 2013, a commencement certificate was issued. On 19th November 2013, a commencement certificate up to 5 floors was issued. On 12th February 2015, the property card was issued by the concerned authority of MCGM showing the respondent's name. On 1st August 2015, the respondent's advocates issued a termination letter terminating the Development Agreement and invoking the arbitration clause.

5. On 23rd September 2015, a reply was issued to the respondent's termination notice. The petitioner had explained the steps it had taken after obtaining vacant possession of the subject property, such as obtaining a property card and area rectification, to secure further CC for the redevelopment of the subject property. Further, the petitioner followed up with departments for area correction/boundary correction of the

subject property, to claim the road setback area and hand over the same to MCGM, to carry out subdivision of land and get appropriate orders thereon, and to carry out rectification of the conveyance deed of the subject property. On 17th October 2015, the advocate for the claimant, in a rejoinder letter to the petitioner's reply, raised false and incorrect contentions.

6. On 7th December 2015, PAAA was executed between the petitioner, the respondent and a member of the respondent. On 12th July 2016, an order by this Court in the respondent's Section 9 petition was passed, whereby by consent, the parties decided that the rent deposited by the petitioner with the court be handed over to the respondent, and the petitioner undertook to furnish a Bank Guarantee for a sum of Rs.75,00,000/- and pay arrears of property tax within a period of four weeks.

7. The respondent undertook to withdraw its letter to the MCGM if the petitioner complied with its undertaking. The petitioner was granted liberty not to hand over possession of the flats to the members of the respondent until its claim regarding the payment required to be made by the members

for the additional area was decided. Respondent's Section 9 petition was disposed of. On 30th August 2016, the respondent issued a termination notice to the petitioner for allegedly defaulting on its obligations under the development agreement and the undertakings given to this Court. On 14th September 2016, reply to the second Termination Notice by the advocate for the petitioner was issued to the respondent. The petitioner contended that it had, by its letter dated 12th July 2016, requested the respondent to extend the time period for complying with the order dated 12th July 2016, and that the respondent had agreed to include the suggestion in the respondent's meeting to be held on 18th August 2016. However, without considering the request, the respondent had purportedly terminated the agreement.

8. On 20th June 2017, the petitioner, by letter, forwarded copies of the pay orders for the Bank Guarantee, rent, and property taxes to the respondent. On 3rd December 2017, the members of the respondent executed a consent letter in favour of the petitioner, allowing the petitioner to carry out the redevelopment.

9. The petitioner filed the statement of claim challenging the termination of the agreement and sought specific performance. The respondent filed a statement of defence and a counterclaim. On 13th November 2019, a demand draft of Rs. 2,70,00,000/- was issued by the petitioner in favour of the respondent, and on 22nd November 2019, consent terms were executed between the petitioner and the respondent. The terms are signed by the members of the respondent, by a representative of the respondent and by the advocates of the respective parties. On 22nd November 2019, minutes of a meeting was recorded that the matter was reserved for the passing of an order by the Arbitral Tribunal. On 27th December 2019, the parties exchanged a draft of the consent terms. On 3rd March 2020, the respondent's advocate sent an email to the Tribunal requesting an award.

10. The respondent took a complete resiled after having agreed to most of the terms between the parties and, in fact, signing a consent term to that effect. On 3rd March 2020, the petitioner's advocate sent an email to the Tribunal and the respondent, expressing shock and surprise at the

respondent's conduct. It was stated that the respondent has not received any communication since the parties signed the consent terms. A request was made to the Tribunal to convene a meeting to understand and seek the reason why the consent terms between the parties were unilaterally rejected. On 9th March 2020, minutes of the meeting were recorded, whereby the Tribunal noted that the parties were trying to settle the disputes. It is further noted that the mandate had expired. Parties undertook to file an appropriate application seeking an extension. On 9th March 2020, the minutes of the consent terms meeting were exchanged between the petitioner and the respondent. On 29th June 2020, an email by the advocate of the petitioner to the advocate of the respondent, forwarding the minutes of settlement arrived between the parties, and requesting to finalise the same.

11. On 8th July 2020, an email by an advocate of the respondent to an advocate of the petitioner wrongly alleged that no settlement talks had purportedly transpired between the parties as recorded on 9th March 2020. Further, the

respondent made demands that were over and above the terms agreed between the parties. On 2nd October 2020, this Court extended the mandate until 28th February 2021 to complete the arbitral proceedings. On 26th February 2021, the petitioner filed written submissions before the Tribunal. On 26th April 2021, the respondent filed written submissions before the Tribunal. On 26th April 2021, this Court extended the mandate of the Hon'ble Tribunal by three months to pass an award. On 26th July 2021, the extended mandate of the Tribunal. On 11th July 2022, the impugned award was passed by the Arbitral Tribunal.

Defence of The Respondent:

12. The claimant breached the terms and conditions of the contract. Under clause 18 of the development agreement, if the benefit of any enhanced FSI became available after issuance of the full IOD, the same was to be shared between the parties in equal proportion. The benefit of fungible FSI that had become available after issuance of the IOD was neither discussed nor disclosed to the respondent. The claimant failed to provide the 7% additional carpet area under clause

26 of the agreement. The claimant also failed to disclose the total number of car parking spaces in the approved plan as required under clause 31 of the agreement. The claimant failed to make payment of the municipal assessment taxes as agreed in clause 43 of the agreement, and also failed to obtain the requisite insurance policy as per clause 48 of the agreement. Under clause 59 of the agreement, the claimant was required to furnish an irrevocable bank guarantee of Rs. 1,25,00.000/-. However, only a bank guarantee of Rs. 75 lakhs was furnished, which lapsed on 23rd January 2015.

13. According to the respondent, the petitioner did not comply with the obligations under the agreement, failed to obtain the plans' approval, and did not pay the monthly compensation. In breach of the agreed terms, the claimant created a third-party interest without handing over the 22 flats to the members. Hence, the termination of the agreement was valid. In the absence of compliance with the terms and conditions of the agreement and failure to plead and prove the readiness and willingness to perform its part of the contract, the claimant was not entitled to specific performance of the

contract as prayed.

Submissions On Behalf Of The Petitioner (Claimant):

14. The claimant had always shown readiness and willingness to comply with the terms and conditions of the contract. Pursuant to the order passed by this court, the claimant had also deposited a pay order in this Court. The claimant had also issued a letter on 20th June 2017 to the society for submitting further pay orders. Hence, the claimant was always ready and willing to provide all the security as per the terms and conditions of the contract, and also comply with all the obligations on the part of the claimant.

15. As per clauses 37 and 39 of the agreement, if any member wishes to purchase additional area over and above the area provided free of cost, then the member was required to pay such extra consideration amount, and the member's right to the additional area would be concluded only upon full payment. Hence, there was no substance in the grievance made on behalf of the respondent that an additional area was not provided. A period of 24 months, including a grace period

of six months, was agreed upon from the date of commencement of the certificate to complete the construction. It was also agreed that if there was any difference or any dispute between the petitioner and the society, the same would be settled by mutual discussion, and if not settled, the parties would go to arbitration. Hence, the respondent's conduct in terminating the agreement shows a complete disregard for the terms and conditions of the contract.

16. By the counterclaim, the society sought to recover the amount paid by members for the purchase of additional area under the contract. Hence, the society would not be entitled to claim any amount from the petitioner on behalf of the members. The learned Arbitrator failed to consider the questions of law and facts involved in the dispute. The learned arbitrator passed the award in a hurry after a very long time, following the conclusion of the arguments. Hence, the award would be liable to be set aside on the ground that it was passed after a very long lapse of time after the conclusion of the arguments.

17. The learned arbitrator failed to take into consideration

the relevant terms and conditions of the contract. Hence, failure on the part of the learned Arbitrator to decide in accordance with the terms of the contract governing the parties would attract the patent illegality ground as the oversight would amount to gross contravention of section 28(3) of the Arbitration Act. He therefore submitted that the impugned award is liable to be set aside under Section 34 of the Arbitration Act. To support his submissions, learned counsel for the petitioner relied upon the decisions of the Apex Court in ***State of Chhattisgarh and Another vs. Sal Udyog Pvt. Ltd.***[1] and ***State of Maharashtra vs. Hindustan Construction Company Ltd.***[2]

Submissions On Behalf Of The Respondent:

18. The claimant breached various terms and conditions of the contract. The learned Arbitrator has considered all the terms and conditions of the contract and the claimant's failure to comply with its obligations. Failure to provide flats to the members before creating third-party rights is also considered an important factor in refusing the discretionary relief of

1 (2022) 2 SCC 275
2 (2010) 4 SCC 518

specific performance. A perusal of the award would indicate that the law arbitrator has considered all the terms and conditions of the contract.

19. The learned Arbitrator held that the question of any delay in the execution of the project on account of time spent updating or rectifying the property card would not arise. All the defences raised by the petitioner are dealt with in the impugned award. The petitioner's contention that the project was delayed on account of changes in the Development Control Regulations, demonetization, introduction of the GST Act, defending the proceedings initiated by third-party flat purchasers and one of the building contractors is discarded in the impugned award with reasons.

20. The learned Arbitrator held that the claimant failed to comply with the undertakings as recorded in the consent orders dated 16th June 2016 and 12th July 2016. Hence, the respondent rightly terminated the Agreement. The respondent issued the termination notice dated 29th August 2016 on account of the petitioner's failure to honour the undertakings given to this Court to furnish security and to pay taxes. The

petitioner took no action for more than a year against the termination of the agreement and the power of attorney. The petitioner's attempts are to harass the respondent society and to block the respondent society from appointing a new developer to complete their redevelopment.

21. The respondent's counterclaim for the return of the amount accepted by the petitioner from the members for the additional area is based on clause 37 of the agreement. The petitioner accepted the amount from the members for the additional area under the agreement. Hence, the respondent's counterclaim for return of the said amount in view of termination of the agreement is well within the scope of the terms and conditions of the agreement. There is no substance in the additional grounds raised by the petitioner that, because the development agreement was not executed independently with the members, the counterclaim cannot be allowed. There is also no substance in the additional ground of challenge that the award is made after a long lapse of time from the date of extension of the mandate. The award is made well within the extended mandate period. All the arguments of

the petitioner and the entire evidence on record are clearly dealt with by the learned Arbitrator. Hence, there is no substance in the additional grounds raised by the petitioner.

22. The petitioner has no financial capacity, readiness, or willingness to perform his part of the contract. The petitioner failed to perform the obligations under the development agreement and has breached every single undertaking given to this court and the indulgence granted by the society and its members. The grounds raised in this petition are an attempt to reargue the case by re-appreciating the evidence, which is not permissible under section 34 of the Arbitration Act. It is an established legal principle that the interference of a court under Section 34 is limited and permissible only when the arbitral award is arbitrary, perverse or suffers from patent illegality, which goes to the root of the matter or when the conscience of the court is shocked. In the present case, no such ground is made out, warranting any interference under Section 34 of the Arbitration Act. The respondent has taken over the physical position of the property and is at an advanced stage of its development by appointing a new

developer. The petitioner's conduct of consistently breaching its obligations and the undertaking given to this court also precludes the petitioner from any relief in this petition.

Analysis and Conclusions:

23. I have carefully perused the findings recorded by the learned Arbitrator while considering the submissions of the parties. I have also perused the pleadings and the evidence. The terms of the contract and all subsequent stages are discussed in detail by the learned Arbitrator. The terms of the contract reveal the petitioner's obligations. The petitioner's argument that steps were taken to complete all the procedures required for area correction and the incorporation of the respondent's name on the property card are part of the obligations recorded in the agreement. The petitioner, on sanction of the plans, had to enter into a permanent alternate accommodation agreement with the members of the respondent. The members of the respondent had to vacate their respective flats only after the petitioner obtained IOD. If members of the respondent wish to purchase additional area, then the consideration was provided in the agreement. The

timelines to complete construction were also provided. The petitioner could offer possession to third-party purchasers only after offering possession to the members. Therefore, in view of the terms and conditions agreed between the parties and the subsequent conduct of the petitioner in not performing all the obligations and not adhering to the timelines are dealt with by the learned Arbitrator. The petitioner's grounds to challenge the termination of the agreement are also dealt with by the learned Arbitrator. Considering the petitioner's conduct as seen from the evidence on record, the learned Arbitrator has discarded all the grounds raised for challenging the termination of the contract. Failure on the part of the petitioner to prove readiness and willingness, and the capacity to complete the project, is also considered an important factor in refusing relief of specific performance.

24. The learned Arbitrator has recorded findings on the breaches committed by the petitioner by referring to the relevant clauses 18, 26, 31, 43, 48, 59 and 62 of the agreement. There appears to be no dispute that the petitioner also failed to comply with the obligation to furnish the bank

guarantee as security, as agreed in the terms and conditions of the agreement. The breach committed by the petitioner of the undertaking given to this court is also part of the record. The explanations and justifications given by the petitioner regarding the provision of security in view of the mutually agreed terms are rejected by the learned arbitrator for want of any satisfactory evidence. Therefore, all the grounds raised on behalf of the petitioner as recorded in the above paragraphs are only about reviewing the evidence.

25. I have perused the terms and conditions of the agreement and the counterclaim. Learned counsel for the respondent is right in pointing out that the counterclaim is well within the scope of the terms and conditions of the contract, and in particular, clause 37 of the agreement. There is no dispute that the amount accepted by the petitioner from the members pertains to the additional area under the development agreement. Therefore, the counterclaim is well within the scope of the terms and conditions of the development agreement. The respondent is entitled to seek return of the amount on behalf of its members on the ground

of termination of the development agreement. There is also no merit in the additional ground of challenge that the award is liable to be set aside, as it is made after a long lapse of time from the date of extension of the mandate. The award is made well within the extended mandate period. Nothing is shown as to how the award is vitiated on the said ground. I have already recorded reasons to hold that the award is made on well-considered reasons after appreciating the pleadings and evidence on record. It is not a ground raised by the petitioner that any particular evidence or any submission was not considered by the learned Arbitrator. Hence, there is no merit in the additional grounds raised by the petitioner. The award cannot be set aside on the additional grounds raised by the petitioner.

26. The grievance made that the terms were amicably settled and the respondent resiled without any intimation or reason has no meaning. There is nothing on record to indicate that any terms of amicable settlement were finalised and accepted on record by the learned Arbitrator. Therefore, such a grievance cannot be considered for the first time in a

Section 34 petition. It is also not a valid ground to set aside the award.

27. The learned Arbitrator has, in detail, dealt with the terms and conditions of the agreement, after appreciating the evidence, interpreted all the terms of the contract, and concluded that the petitioner failed to comply with the obligations and that the respondent is justified in terminating the contract. The reasonable conclusion reached by the learned Arbitrator is a plausible view. It is a well-established legal principle that reappreciating the findings of the arbitral tribunal and taking an entirely different view is not permissible in a petition under Section 34, thereby virtually acting as a court of appeal. There cannot be a reappreciation of evidence, and the award cannot be set aside only on the ground that, on merits, another view is possible. It is also a settled view that perversity would include patent illegality if the finding is based on no evidence at all, or an award that ignores vital evidence, or a finding based on documents taken behind the back of the parties. In the present case, the learned Arbitrator has considered the entire evidence. Thus, the view taken by the

learned Arbitrator is based on a consideration of the entire evidence on record and an interpretation of the terms of the contract. Hence, the decisions of the Apex Court relied upon by the learned counsel for the petitioner are of no assistance to the petitioner in the facts of the present case.

28. 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.

29. In the present case, 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.

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

[GAURI GODSE, J.]