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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.20113 OF 2026

Jijimon Joseph ... **Petitioner**

Vs.

1. **Vijay Navnitlal Shah**
2. **Managing Committee**, through it's Chairman, Chawla Complex Premises Cooperative Society Limited ... **Respondents**

Ms. Shreya Jha with Ms. Nupur Shah for the petitioner.
Mr. Vijay N. Shah, respondent No.1 in-person.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 24, 2026.

PRONOUNCED ON : JULY 28, 2026

JUDGMENT:

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996. According to the petitioner, respondent No. 1 had agreed to sell his 46% undivided share, right, and interest in the suit property under an Agreement for Sale dated 17 October 2017 for a total consideration of Rs. 25,00,000/-. The petitioner states that even after repeated written requests for more than eight years, respondent No. 1 has neither cleared the outstanding dues payable to the Society nor obtained the required No Dues Certificate and NOC. Because of this failure, the petitioner invoked the arbitration clause contained in Clause 16 of the Agreement by issuing a notice dated 5 March 2026. It is further stated that the Society received the Commencement Certificate from the Navi Mumbai Municipal Corporation on 10 June 2026 and the redevelopment process is likely to begin. The petitioner apprehends that respondent No. 1 may execute the redevelopment agreements only in his own name, create third party rights or otherwise deal with the property, thereby making any arbitral award ineffective. On this basis, the petitioner seeks interim protection by way of an order of status quo and appointment of the Court Receiver till the arbitral tribunal is constituted.

2. The petitioner has placed the following sequence of events on record. On 17 October 2017, the petitioner and respondent No. 1 executed an Agreement for Sale. Under the agreement, respondent No. 1 agreed to transfer his 46% undivided right, title and interest in the suit property to the petitioner for a total consideration of Rs. 25,00,000/-. On 20 April 2018, the Society obtained a Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 from the Joint Registrar of Co-operative Societies, CIDCO, Navi Mumbai. Under the said certificate, respondent No.1 was held liable to pay Rs. 5,53,894/- together with interest towards the Society dues. On 15 May 2018, the petitioner prepared demand drafts amounting to Rs. 6,83,567/- in favour of the Society for clearing the outstanding dues. However, the Society did not accept the said demand drafts.

3. On 17 May 2018, the petitioner issued three cheques amounting to Rs.5,00,000/- in favour of respondent No. 1. According to the petitioner, the amount was paid so that respondent No. 1 could clear the Society dues and complete the transfer of the property. On 4 October 2019, the petitioner and respondent No. 1 jointly made a representation to the Society requesting settlement of the outstanding dues and completion of the transfer. The Society did not accept the said request. Between 14 October 2021 and May 2024, the petitioner addressed several letters to respondent No. 1 requesting him to clear the Society dues, obtain the No Dues Certificate and NOC, and complete the transfer of the 46% share in accordance with the Agreement for Sale. During the same period, the petitioner also addressed letters to the Society requesting completion of the formalities required for recording his name as a member of the Society.

4. On 5 March 2026, the petitioner invoked the arbitration clause contained in Clause 16 of the Agreement by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. On 10 June 2026, the Society received Commencement Certificate from the Navi Mumbai Municipal Corporation for redevelopment. It is in these circumstances that the present petition has been filed.

5. The petitioner has raised following issues for consideration. Firstly, whether the Agreement for Sale dated 17 October 2017 and the payments made by the petitioner establish a prima facie right in respect of the 46% undivided share in the property.

Secondly, whether respondent No. 1 has committed breach of the Agreement by not completing the transaction for more than eight years. Thirdly, whether the petitioner will suffer irreparable loss if interim protection is not granted in view of the redevelopment of the property. Lastly, whether the balance of convenience is in favour of granting interim relief to the petitioner. According to the petitioner, the Agreement for Sale dated 17 October 2017 continues to be valid and enforceable. It is submitted that the petitioner paid Rs. 3,75,000/- at the time of execution of the agreement and another Rs. 5,00,000/- in May 2018, making a total payment of Rs. 8,75,000/- directly to respondent No. 1. The petitioner also states that he had arranged demand drafts for Rs. 6,83,567/- in favour of the Society towards the outstanding dues, but the Society returned the demand drafts because respondent No. 1 had challenged the Recovery Certificate. It is further stated that respondent No. 1 had executed an irrevocable Power of Attorney authorising the petitioner to take steps for completion of the transaction. According to the petitioner, respondent No. 1 failed to obtain the required NOC before 30 April 2018, did not return any amount received from the petitioner, and also failed to respond to repeated written reminders sent over several years. On these facts, the petitioner contends that he has established a strong prima facie right in respect of the 46% share in the property.

6. The petitioner further submits that the balance of convenience is in his favour. It is contended that he has paid Rs. 8,75,000/- under the Agreement and may permanently lose his rights in the property and the redevelopment benefits if interim protection is refused. According to the petitioner, an order directing maintenance of status quo will not prejudice respondent No. 1 because it will only preserve the existing position until the dispute is decided. It is also submitted that respondent No. 1 is bound by the Agreement not to deal with the property contrary to the petitioner's rights.

7. The petitioner also submits that he will suffer irreparable loss if interim relief is not granted. According to him, the Society has received the Commencement Certificate and is likely to execute redevelopment agreements shortly. If respondent No. 1 enters into such agreements in his own name or otherwise deals with the property without recognising the petitioner's alleged 46% share, the petitioner's rights may be lost permanently. It is further submitted that by the time the arbitral proceedings conclude, the redevelopment may be completed, making it difficult to enforce any award passed in favour of the petitioner.

8. The petitioner has also relied upon the conduct of respondent No. 1 throughout the transaction. According to the petitioner, respondent No. 1 accepted Rs. 3,75,000/- at the time of the Agreement and another Rs. 5,00,000/- in May 2018 but did not take any steps to clear the Society dues or obtain the necessary certificates. It is further stated that respondent No. 1 ignored repeated written reminders and retained the money paid by the petitioner without justification. The petitioner points out that the Society dues, which were outstanding when the Agreement was executed, have increased to Rs. 29,15,723/- as of September 2025. According to the petitioner, this shows that respondent No. 1 has no intention of performing his obligations under the Agreement, making intervention by the Court necessary.

9. The petitioner submits that Section 9 of the Arbitration and Conciliation Act empowers this Court to grant interim protection before or during arbitral proceedings. It is contended that since the suit property is the subject matter of the dispute and there is an immediate possibility of respondent No. 1 dealing with the property, this Court has jurisdiction to grant protective orders for preserving the property until the arbitral tribunal decides the dispute.

10. The petitioner also seeks appointment of the Court Receiver, High Court, Bombay, in respect of the suit property. According to the petitioner, the redevelopment process has commenced and there is a real possibility that respondent No. 1 may take unilateral steps affecting the petitioner's rights. It is submitted that the Court Receiver can safeguard the property, coordinate with the Society and the developer, ensure that the petitioner's alleged 46% interest is recognised during redevelopment, receive redevelopment benefits on behalf of the parties, and preserve the property and all related rights until the arbitral tribunal decides the dispute. On the above basis, the petitioner has prayed interim reliefs.

11. On the previous date, time was granted to the respondent to engage an Advocate. However, despite the opportunity granted by this Court, the respondent has failed to engage an Advocate.

<u>REASONS AND ANALYSIS:</u>

12. I have carefully gone through the pleadings, documents placed on record and the submissions made on behalf of the petitioner. Though sufficient opportunity was granted, respondent No. 1 has chosen not to engage an Advocate. The Court has examined the material placed before it. Merely because the petition is not opposed, the petitioner does not become entitled to the reliefs prayed. The Court is still required to examine whether the requirements for grant of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 are made out from the record.

13. From the papers, it is seen that the petitioner is claiming rights under the Agreement for Sale dated 17 October 2017. Under this document, respondent No. 1 agreed to transfer his 46% undivided right, title, and interest in the subject property for consideration of Rs. 25,00,000/-. The petitioner has produced copy of the Agreement. There is also material to show that at the time of execution, an amount of Rs. 3,75,000/- was paid to respondent No. 1. The petitioner has further produced material showing payment of another Rs. 5,00,000/- during May 2018. Prima facie, therefore, payment of Rs. 8,75,000/- by the petitioner to respondent No. 1 cannot be said to be without any basis. At this stage, there is no material before the Court showing that these payments were returned or that the Agreement itself stood cancelled by mutual consent.

14. The petitioner has further relied upon the fact that respondent No. 1 was required to clear the Society dues and obtain the No Dues Certificate and NOC for completing the transfer. The record shows that a Recovery Certificate under Section 101 of the

Maharashtra Co-operative Societies Act came to be issued against respondent No. 1 in respect of Society dues. The petitioner has also produced copies of demand drafts prepared in favour of the Society. Though those demand drafts were not accepted, the documents indicate that the petitioner had at least attempted to facilitate settlement of the dues. Whether such conduct amounts to complete performance of obligations is a matter which will require detailed evidence before the Arbitral Tribunal. However, for deciding the present petition, these circumstances do support the petitioner's case that he was interested in completion of the transaction.

15. The petitioner has also relied upon several letters addressed to respondent No. 1 between the years 2020 and 2024. These communications called upon respondent No. 1 to clear the Society dues, obtain the necessary certificates and complete the transaction. Copies of these letters are placed on record. There is nothing before this Court to indicate that respondent No. 1 replied to these communications or disputed the petitioner's claim immediately after receiving them. Such silence may not amount to admission of liability. Still, at this prima facie stage, absence of any response assumes relevance while examining the conduct of the parties.

16. The petitioner has also placed reliance upon an irrevocable Power of Attorney executed by respondent No. 1. The existence of such document prima facie indicates that respondent No. 1 had intended to facilitate completion of the transaction. At the same time, merely because a Power of Attorney exists, title in immovable property does not stand transferred. The petitioner's rights under the Agreement and the effect of the Power of Attorney are questions which shall finally be decided by the Arbitral Tribunal after recording evidence. Therefore, this Court refrains from expressing any opinion on those issues.

17. The petitioner has further submitted that arbitration has been invoked by issuing notice under Section 21 of the Arbitration and Conciliation Act on 5 March 2026. The notice invoking arbitration is placed on record. At this stage there is nothing to indicate that invocation of arbitration is invalid or contrary to the arbitration agreement. Therefore, the present petition under Section 9 cannot be said to be premature.

18. A serious circumstance placed by the petitioner relates to the redevelopment of the Society. The material on record shows that the Society has received the Commencement Certificate from the Navi Mumbai Municipal Corporation. Once the redevelopment process starts, agreements regarding purchase, alternative accommodation, corpus, additional area and other redevelopment benefits are likely to be executed. This development is an event which has commenced. Therefore, the possibility of rights arising in favour of parties under redevelopment cannot be ignored.

19. The petitioner apprehends that respondent No. 1 may execute redevelopment documents in his own name without recognising the petitioner's alleged rights. Such apprehension, in the facts of the present case, cannot be termed wholly speculative. If redevelopment proceeds without any protection and third party rights are created, the subject matter of arbitration may undergo substantial change before the arbitral proceedings conclude. This Court is required to ensure that the arbitration does not become meaningless because of events taking place during pendency of the proceedings.

20. The petitioner has also pointed out that the outstanding Society dues have substantially increased over passage of time. Prima facie, the documents indicate that the dues have grown considerably. Whether the entire increase is attributable to respondent No. 1 or whether there are other circumstances contributing to such increase cannot be finally decided at this stage. Nevertheless, the increase in liability does indicate that the dispute has continued unresolved for several years without any progress.

21. It is true that the petitioner has sought interim reliefs including appointment of Court Receiver, disclosure of documents, restraint against redevelopment transactions and directions against the Society and the developer. Every relief sought under Section 9 is not required to be granted merely because the petitioner establishes a prima facie case. Interim relief must remain proportionate to the purpose sought to be achieved. The Court has to ensure preservation of the subject matter and should avoid granting final relief at the interim stage.

22. The petitioner has established a prima facie relationship under the Agreement for Sale. The payments made by the petitioner are supported by documents. The repeated correspondence produced on record indicates continuous demand for performance of obligations. There is also material showing commencement of redevelopment activities. These circumstances together create a prima facie case requiring preservation of the subject matter till the disputes are adjudicated by the Arbitral Tribunal.

23. The balance of convenience also requires consideration. If no interim protection is granted and respondent No. 1 deals with the redevelopment rights in a manner inconsistent with the petitioner's claim, restoration of the original position may become difficult. On the other hand, if the property and redevelopment rights are merely preserved during pendency of arbitration, respondent No. 1 does not lose ownership finally nor are his substantive rights finally decided. Preservation of the existing position causes comparatively lesser prejudice than permitting irreversible changes.

24. The question of irreparable injury also deserves consideration. Compensation in money may not always adequately compensate a person claiming a specific interest in immovable property, particularly when redevelopment rights, alternate accommodation, additional area and other benefits become involved. Once redevelopment agreements are executed and third party rights arise, it may become difficult to restore the original position even if the petitioner succeeds in arbitration. Therefore, the apprehended injury cannot be said to be compensable by damages.

25. At the same time, this Court is conscious that respondent No. 1 has not appeared through an Advocate and no detailed defence is available for consideration. Therefore, no observation made in this order shall be construed as a final finding regarding validity of the Agreement, performance of reciprocal obligations, limitation, readiness and willingness, legality of the payments, ownership rights or entitlement to specific performance. All such issues shall remain open for determination before the Arbitral Tribunal on their own merits.

26. On an overall assessment of the material presently available, this Court is satisfied that the petitioner has shown existence of an arbitration agreement, a prima facie right requiring protection, a real possibility of change in the nature of the property because of redevelopment, and likelihood of prejudice if interim protection is refused. Though certain aspects of the petitioner's claim will require detailed evidence and final adjudication during arbitration, those issues do not dilute the necessity of preserving the subject matter at this stage.

27. Consequently, the requirements governing exercise of jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996 stand substantially satisfied. The interest of justice would therefore be served by granting appropriate protective relief so that the subject matter of the arbitration remains intact, and any award passed by the Arbitral Tribunal does not become ineffective or incapable of enforcement. The rival rights of the parties shall finally be determined only in the arbitral proceedings on the basis of evidence led before the Arbitral Tribunal.

28. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Petition is partly allowed;

(ii) Pending the constitution of the Arbitral Tribunal and for a period of ninety days thereafter, or until an application under Section 17 of the Arbitration and Conciliation Act, 1996 is decided by the Arbitral Tribunal, whichever is earlier, respondent No. 1, his servants, agents, representatives and all persons claiming through or under him are restrained from selling, transferring, alienating, encumbering, mortgaging, creating any third party rights or otherwise dealing with or disposing of his alleged 46% undivided right, title and interest in Shop No. 53, Ground Floor, Chawla Complex, Plot No. 38, Sector 15, CBD Belapur, Navi Mumbai, in a manner which would prejudice the rights claimed by the petitioner under the Agreement for Sale dated 17 October 2017;

(iii) Respondent No. 1 is further restrained from executing any Agreement for Permanent Alternate Accommodation, Agreement for Purchase and Alternative Accommodation, redevelopment agreement, supplementary agreement or any other document concerning the subject property with the developer, without specifically disclosing the pendency of the present proceedings and the petitioner's claim under the Agreement for Sale dated 17 October 2017;

(iv) In the event any redevelopment agreement is proposed to be executed during the subsistence of this order, respondent No. 1 shall give prior written notice to the petitioner at least seven days in advance;

(v) Respondent No. 2 Society and the developer shall maintain separate accounts of all monetary benefits, corpus, compensation, hardship compensation, rent, shifting charges or any other redevelopment benefits payable in respect of the subject property. Release of such amounts shall remain subject to further orders of the Arbitral Tribunal or any competent Court;

(vi) Respondent No. 1 shall, within three weeks from today, file an affidavit disclosing whether he has executed or proposed to execute any redevelopment agreement or any other document relating to the subject property after issuance of the notice invoking arbitration. He shall also disclose whether he has received or become entitled to receive any redevelopment benefits;

(vii) The prayer seeking appointment of the Court Receiver is not being granted at this stage. At present there is no material to indicate that symbolic possession through the Court Receiver is immediately necessary for preservation of the subject matter. Liberty is reserved to the petitioner to seek appropriate relief if subsequent events so warrant;

(viii) The observations made in this order are prima facie in nature and confined to consideration of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide all disputes and without being influenced by any observations contained in this order;

(ix) The petitioner shall take steps for constitution of the Arbitral Tribunal within four weeks from today, if not constituted;

(x) It is clarified that if an application under Section 17 of the Arbitration and Conciliation Act, 1996 is filed before the Arbitral Tribunal, the Tribunal shall consider the same on its own merits and in accordance with law, uninfluenced by the present order;

(xi) The petition is accordingly disposed of in the above terms;

(xii) There shall be no order as to costs.

(AMIT BORKAR, J.)