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

ARBITRATION PETITION NO.601 OF 2015

Mr. Suresh J. Pimparkar ....Petitioner

Versus

Charkop Om Gayatri Co-operative Housing Society Ltd. ....Respondent

Mr. Ashok T Gade *a/w. Ms. Riya John and Navin B. Rathod, for Petitioner.*

Mr. Nitin V. Gangal *a/w. Namita Mestry and Prapti Karkera, for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 18, 2026

JUDGEMENT:

Context and Factual Background:

1. The challenge in this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") is to an Arbitral Award dated May 5, 2009 ("***Impugned Award***") by which, a claim made by the Petitioner, Mr. Suresh J. Pimparkar, Proprietor of Gayatri Developers ("***Developer***") was rejected in its entirety while a counter-claim made by the Respondent,

Charkop Om Gayatri Co-operative Housing Society Ltd. ("***Society***") has been partially allowed.

2. The disputes and differences between the parties relate to a Development Agreement dated April 14, 1995 ("***Development Agreement***") read with a Supplemental Development Agreement dated September 15, 2002 ("***Supplemental Agreement***"). Disputes and differences arose between the parties over claims for payment sometime in 2003 and the Society terminated the agreement between the parties by a Notice dated December 16, 2004 ("***Termination Notice***").

3. The Development Agreement and the Supplemental Agreement contain provisions for payment of interest on unpaid bills, which form the subject matter of dispute between the parties. Between May 30, 2003 and April 12, 2004, the parties traded correspondence over amounts due. According to the Developer, the dues accumulated at that point in time were to the order of Rs.~25.27 lakhs. A Petition under Section 9 of the Act had been filed by the Developer in 2005 quantifying the amount due at Rs.~ 1.09 Crores. The Developer's claim in the arbitration proceedings was for this sum along with interest rate of 18% per annum while the counter-claim made by the Society was to the order of Rs.~2.49 Crores with 18% interest.

4. The Impugned Award directs payment of Rs. 13,15,324 within two months with interest rate @18% thereafter, and handing over of vacant possession of the ground floor shops to the Society. The Impugned Award rejects the Society's claim to forfeit Rs. 22 lakhs.

Analysis and Findings:

5. Against this factual backdrop, I have heard Mr. Ashok Gade, Learned Advocate on behalf of the Developer and Mr. Nitin Gangal, Learned Advocate on behalf of the Society, and with their assistance, I have examined the material on record including the Impugned Award.

6. At the heart of the dispute lies the development of the Society's premises, which was essentially contracted in terms of the Development Agreement to develop premises comprising 39 residential flats and about seven shops. The consideration for the construction was agreed at the rate of Rs.545 per sq. ft. on the basis of built up area and the total built up area of 28,500 sq. ft. was contracted, with the maximum escalation contracted at 10%.

7. It is common ground that the Developer had paid a sum of Rs.22 lakhs to the Society towards the lease premium payable to the Maharashtra Housing and Area Development Authority ("***MHADA***"), which was also used by the Society to pay the amount over to MHADA with Rs.3,00,000/- added by the

Society which too had been the Developer's obligation to pay. The Society was registered only on December 28, 1995 and an agreement for lease was executed between the Society and MHADA on March 2, 1996. The construction plan was approved by the Municipal Authorities on February 4, 1997 and Commencement Certificate was received on August 2, 1997. On December 9, 1998 an amended plan was approved and the total construction to be carried out pursuant to the Development Agreement contained construction of 37,688.39 square feet, of which, 1,591.52 square feet of built-up area was meant to be allocated for shopping.

8. According to the Society, within seven days of the execution of the Development Agreement, on April 21, 1995, the Developer purported to have sold shopping area to the extent of 1,900 square feet to one Vasantsingh Purohit at the rate of atleast Rs.2,045 per square foot, as against the rate of Rs.2,800/- per square foot as contracted in Clause 3 of the Development Agreement. This was at a point in time when the Society had not even been registered, no lease had been executed by MHADA in its favour and no plans had been sanctioned. According to the Society, the Developer thereafter abandoned the project and left the construction incomplete, which led to the termination of the Development Agreement.

9. The parties then executed a Supplemental Agreement on September 15, 2002 because of disputes that had arisen between the parties over the operation of the Development Agreement. The Society would contend that it was the Developer who wrote to the Society asking for refund of the retention money after completion of 80% of the project work by a notice dated April 1, 2003. The Developer also started following up for full payment of the outstanding amounts accumulated at that time, to the extent of Rs.~25.27 lakhs and in September 2003, the Developer abruptly stopped the work.

10. The parties then appeared to have held a meeting on April 18, 2004 whereby it was acknowledged that work had been completed to the extent of 83.5% and that work would resume within 15 days. On April 27, 2004, the Developer issued a legal notice denying the minutes of the meeting held on April 18, 2004, although it is signed by all the parties. Eventually, on December 16, 2004, the Termination Notice was issued by the Society. The Society claimed that it had until then paid a sum of Rs.1,93,98,033/- towards approved bills, namely to the extent of 83.6% of the work approved, indicating that only 83.6% of the work had been completed. The Society contended that on apportioning the amount paid until then, the Developer must refund the excess sum of Rs.5,31,654/- paid to the Developer.

11. The Society also contended that the work did not conform to the approved plans and that the Society had incurred losses owing to payment of monthly loan instalments and payment of municipal taxes without even getting proper possession and that multiple members had to also fork out rent towards alternate accommodation during the delay. According to the Society, while an agreed area of sale of 2,100 square feet had been contracted, the Developer had provided an area of only 1,244 square feet. The Society contended that the members have had to incur additional expense towards Municipal Assessment and interest on delayed payment on the advance amount of Rs.5.57 lakhs and makes a claim for rent to the extent of Rs.22.23 lakhs.

12. The arbitrator found that there had been defaults on the part of the Society to some extent and indeed, certain additional work had to be carried out by the Developer. The arbitrator held that the extent of completion was not 87.5% as claimed by the Developer, but 83.5% and that shopping area did not conform to the obligation of providing 2,100 square feet and was only to the extent of 1,244 square feet. It was held that the Society had proved that the Developer had delayed the work. Moreover, the arbitrator found that the parties had arrived at a settlement on April 18, 2004 and that the Society had made payments for the work done until September 2003.

13. The validity of the Termination Notice owing to stoppage of work was upheld. The Society's contention of excess payment of Rs. 5,31,654; damages of Rs.2.87 lakhs for breach of contract; and recovery towards taxes and outgoings were found to be correct. The arbitrator also rejected the Society's claim for forfeiture of Rs. 22 lakhs and dismissed the Society's claim for recovery towards incomplete construction and rejected the claim that there had been leakages due to defects in the construction.

14. Against this background, the Impugned Award needs to be examined from the perspective of whether a case has been made out for interference under Section 34 of the Act. It is necessary to record that this Petition was instituted way back in 2009 as Arbitration Petition (L) No.621 of 2009 and was merely renumbered in 2015. Rule was issued on December 7, 2009. Consequently, Section 34 of the Act, prior to the amendments introduced by the Arbitration and Conciliation (Amendment) Act, 2015 with effect from October 23, 2015 must be applied.

15. However, nothing turns on this, since for the reasons set out below, the challenge would fail even on the wider pre-amendment standard on which the Developer places reliance. It is also to be recorded that on July 15, 2009, this Court took on record the statement of the Society that it would not take any

steps to execute the Impugned Award, and that arrangement has continued until today.

16. Having examined the grounds adopted on behalf of the Developer and the written submissions filed on their behalf, along with the contentions made at the hearing, the challenge can be summarized as one on the ground of patent illegality for not interpreting the agreement correctly and for failing to appreciate that the Society had consistently defaulted in payments since inception. The rate of construction and payment of Rs.25,00,000 as a lease premium to MHADA had been contracted in the Development Agreement as adjustable against an advance payment for the commercial area of 2,100 square feet, the Developer would contend.

17. Commencement of construction was contracted to begin within seven days from the issuance of Commencement Certificate, with a deadline of 21 months. The Development Agreement also contained a provision that, in the event of a delay in payment beyond 15 days from the date of submission of an Architect's certificate and a certified bill, default interest at the rate of 18% per annum would be payable by the Society. It is contended that the Impugned Award does not accurately deal with the same.

18. Likewise, under Clause 5 of the Supplemental Agreement, it was contracted that if payment was not made beyond an initial period of 21 days, a

cure period of another seven days was contracted, after which interest would be due at the rate of 18% per annum. The Developer was entitled to stop work until payment was made and the Learned Arbitrator is said to have ignored the fact that the Society had consistently defaulted in making payments. The computation of interest was held by the Arbitrator as to not commence from 1997 because the Supplemental Agreement is said to have recorded the Developer's commitment to forgo the accrued interest, with a new bargain being struck.

19. The Developer would also contend that the award is in conflict with the fundamental policy of Indian law inasmuch as the Learned Arbitrator refused to grant payment for extra piling work on the ground that the Supplemental Agreement did not mention any amounts towards the extra piling work. The extra work undertaken by the Developer is attributed by the Developer to change of sanctioned plan, which is a consequential legitimate expense that ought to have been allowed. It is also contended that the shopping area being 1,244 square feet instead of 2,100 square feet was in conformity with Clause 3 of the Development Agreement and was not modified in the Supplemental Agreement and therefore the finding about a breach in this regard is directly contrary to the contract. The Society is said to have agreed to the area in the very first Development Agreement and this was not modified in the

Supplemental Agreement and the Developer contends that he ought to have been compensated by the Society in accordance with the contract.

20. Various submissions were also made about errors in calculation and deduction of the grace period and manner of computation of interest as per the charts annexed by the respective parties. The entire shopping area is now in the possession of the Society for which the Developer had already paid Rs.22,00,000/- for an area of about 2,100 square feet. It was only because the amended plan was sanctioned that the commercial area got reduced to 1,244 square feet, and therefore, the shops ought to have been released to the Developer, but have been illegally withheld and kept under lock till date.

21. Having examined the detailed submissions in this regard, I am afraid the submissions broadly fall within the ambit of appreciation of evidence which squarely falls in the domain of the Arbitral Tribunal. Unless the appreciation of evidence is so perverse as to strike at the root of the matter and has led to a finding that no reasonable and logical person would ever return, it would not be feasible for the Section 34 Court to interfere with the Arbitral Award. The arbitrator was a pre-agreed named arbitrator who was an architect by profession and the parties consciously chose him as the arbitrator for settlement of the dispute in view of his perceived expertise and independence in the matter. The arbitrator was the very architect who had

overseen performance of the contract and both parties had consciously agreed to name him as the arbitrator because of their implicit trust in his objectivity. Therefore, the findings returned by such an expert arbitrator in whom the parties had explicitly reposed faith, cannot be lightly disturbed and must be examined within the framework of Section 34 of the Act.

22. On a careful reading of the Impugned Award it becomes clear that no intervention in exercise of powers under Section 34 of the Act is warranted. The Impugned Award has dealt with the issues framed and has presented a cogent analysis, issue by issue. At the heart of the contractual relationship between the parties is the fact that Development Agreement was initially for an approximate developed area of 28,500 square feet to be constructed at the rate of Rs. 545 per square foot. In consideration of the same, the Developer was to be given commercial shop floor space at an agreed rate of Rs. 2,800 per square foot, which worked out to Rs. 53.20 lakhs so that he could sell that portion in the market and earn profit. The Developer was to pay Rs. 25 lakhs, of which he paid Rs. 22 lakhs in advance, and was to pay the balance after completion of the construction.

23. As the plans got approved and the measure in square meters was converted into square feet with the municipal approvals, the construction area amounted to 37,688.39 square feet. Out of this 1,591.52 square feet was to be

provided as shopping area. Shopping area of 1,900 square feet was sold at the rate of Rs. 2,045 per square foot to a third party even before the Society was formed. Under the Supplemental Agreement, an instrument executed after inordinate delays led to a resolution, the rate per square foot was revised to Rs.599 per square foot and the deadline was changed to eight months from its execution i.e. until June 15, 2003.

24. However, even as of September 2003, the building was not completed, and only a little over 80% was completed. Yet, the Developer stopped further work, contending that his payments were not being released. The parties held a meeting on April 18, 2004 to resolve their disputes, and minutes of meeting were signed to record their resolution. Payments were scheduled and were paid but the Developer refused to resume work. The Society ultimately issued the Termination Notice on December 16, 2004 and took up the work on its own to complete the remaining work.

25. The interest claim was held by the Learned Arbitral Tribunal to be untenable because the Developer had computed interest from the very next date of the bill being raised, whereas under the contract, interest was to be computed after ignoring the time for receipt of certification from the architect, and another 21 days thereafter. That apart, the Learned Arbitral Tribunal found that in Clause 11 of the Supplemental Agreement, disputes over past

interest had been settled with the rate being revised and the claim for interest was foregone. Therefore, the Learned Arbitral Tribunal rejected the claim made by the Developer on this count. This is squarely a facet of interpretation of evidence and the contract, and the interpretation cannot be said to be an implausible and unreasonable one.

26. The claim for extra piling work too falls in the same category, because by interpreting the contract, the Learned Arbitral Tribunal found that the increase in rate per square foot accounted for the claim towards the additional piling work. This again is a reasonable interpretation of the contract. On the extent of completion, based on the material on record, the Learned Arbitral Tribunal who was an architect by profession and had been consciously agreed by the parties as being the best arbitrator of their disputes, held that the completion was to the extent of 83.5% and not 87.5% as contended by the Developer. The Learned Arbitral Tribunal has effected a computation and returned a reasoned finding and in my opinion, no perversity has been brought to bear by the Developer. In my view, most of the contentions by the Developer fall in the realm of reappreciation of evidence and are in the nature of an appellate review, which the jurisdiction under Section 34 of the Act does not permit.

27. The dispute on the size of the shopping area that has been given and whether the Developer was expected to be provided 2,100 square feet, was dealt with squarely by the Learned Arbitral Tribunal. It has been found that when the Development Agreement was executed, there were no plans and even the land had not been allotted by MHADA. When the land was allotted and plans were drawn it transpired that the sanctioned plan would indicate shopping floor area as 1,591.52 square feet. This was relied upon by the Learned Arbitral Tribunal to indicate what the shopping area would be. Considering the location of the land and the sanctioned plan, the Learned Arbitral Tribunal has found that 1,900 square feet could be considered to be the salable area for the shop, with the built up area being 1,591.52 square feet.

28. Therefore, the contention of deliberate reduction of shopping area was rejected. I see no basis to interfere with such finding, which appears to be cogent and logical and is, in any case, consistent with the plans sanctioned by the municipal authorities. In arriving at these findings, the Learned Arbitral Tribunal has analyzed the evidence led by the parties and in my view, this facet of the matter too does not call for interference.

29. The Learned Arbitral Tribunal has recorded that in Clause 3 of the Development Agreement, the shopping area was not to be sold to the Developer. It was meant to be allotted to the Developer as part consideration

for the construction at an agreed rate of Rs. 2,800 per square foot. Therefore any difference between this rate and the eventual market rate would be to the Developer's benefit. The balance of the price was to be paid at that stage i.e, when performance of the construction obligation was completed by the Developer. The Learned Arbitral Tribunal has found that if this obligation itself was not completed, the entitlement to the shopping area did not accrue at all. Therefore, on this count too I am unable to find any basis to interfere with the Impugned Award.

30. As regards the sum of Rs. 22 lakhs paid by the Developer, the Learned Arbitral Tribunal has rejected the Society's claim to forfeit that amount, and the Society has not challenged that rejection. The Developer has not sought restitution in his Statement of Claim, his case having consistently been that he was entitled to the shops themselves. The Impugned Award therefore neither forfeits the amount nor directs its refund, and it is not open to this Court in the exercise of its Section 34 jurisdiction to write into the Impugned Award a relief that was never sought before the Learned Arbitral Tribunal. It is clarified that this judgement does not decide, one way or the other, any right that the Developer may have to seek recovery of that amount in appropriate proceedings, and all contentions of both sides in that regard are expressly kept open. It must be remembered that the scope of review in this jurisdiction is defined by the contours of Section 34 of the Act.

31. The sale of the shops to a third party by the Developer was also found to be at a significant discount, which was held to be inexplicable. The execution of such an agreement was considered dubious since the Society had not been informed and the land being leasehold land of MHADA, the sale could not have been effected without the approval of MHADA. It appears that the sale agreement was also executed by three members of the proposed Society, but it was held that this could not have been considered a valid approval by the Society, which would have had to get a general body approval rather than have proposed members agree to the sale of a property that would need to be developed, even ahead of the Society being formed, for such an agreement to bind the Society. Being a pre-formation contract, it would have needed ratification from the Society post-formation, which was not done. Therefore, on this count too, I find it difficult to disagree with what appears to be logical, reasonable and plausible findings by the Learned Arbitral Tribunal, and consistent with the requirement of law.

32. Two further contentions of the Developer need to be dealt with. One deals with the need to have released retention money on a proportionate basis – since 83.5% of the work was held to be completed. On facts, the Learned Arbitral Tribunal has found that, in fact on a proportionate basis, the Developer had been paid a marginal excess. Therefore, the question of release of the retention money would not arise. Another claim of Rs. 90,000 towards

demolition was rejected for want of certification of the work done and the bill. It is not possible to hold these views rendered by the master of the evidence and the proceedings, as perverse. So also, the challenge to the award of damages to the tune of Rs. 2,87,000 and recovery towards taxes and outgoings on the premise that they were outside the scope of the contract, does not appeal to me since the Impugned Award traces these awards to the contractual stipulations. Therefore, in my view the reliance on case law that deals with perversity on the premise of an arbitral award being unconnected to the underlying contract does not turn the needle in the Developer's favour. If anything, these submissions relate to interpretation of contract, which too, it is well settled, falls within the domain of the Learned Arbitral Tribunal. So long as the interpretation of contract is a reasonably plausible reading, in my view, there can be no quarrel with the Impugned Award on this count.

33. Separate from the contentions that have been repelled on the basis of them being founded on a desire to reappreciate evidence or interpret the contract afresh, there is also a ground of natural justice. The request for staying the arbitral proceedings pending an application seeking substitution of arbitrator was rejected and the cross-examination was continued. The contention was that the Learned Arbitral Tribunal was manned by the architect, who had even presided over the meetings of the parties in April 2004, making it improper for him to sit in judgement on facts covered by

those meetings. I am unable to accept these submissions simply because it is not right to insinuate that the Learned Arbitral Tribunal was manned by the Society's architect, calling into question the independence and impartiality of the Learned Arbitral Tribunal. The parties had an agreement with a named sole arbitrator. This is entirely in discharge of full party autonomy of both the Society and the Developer. An arbitration agreement with a named arbitrator indicates a sovereign choice of the contracting parties and even if it is contended that such a person was related to one of the parties, the very execution of the arbitration agreement constitutes a conscious choice of granting a waiver of any objections on this count. It is not tenable to question the independence and impartiality of an arbitrator consciously named in the arbitration agreement by the party seeking to question it after the arbitral award turned out to be unpalatable. The refusal to grant an adjournment is at odds with the Developer's complaint about the delay in conduct of arbitration. This ground too is not tenable within the framework of prejudice envisaged for a challenge under Section 34 of the Act.

34. For purposes of this judgement, I have referred to in detail the key facets that were specifically pressed into service at the hearing. However, on a review of the Impugned Award and the written submissions filed by the respective parties, I must say that all the remaining challenges too fall in the same category of questioning the manner of appreciation of evidence by the

Learned Arbitral Tribunal. As indicated above, Section 34 proceedings are not appellate proceedings. The scope of review in this jurisdiction is subject matter of multiple judgements, including ***Dyna Technologies***[1] and ***Associate Builders***[2], to name just two judgements that declare the law as it existed prior to the 2015 Amendment to the Act. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these multiple judgements. Suffice it to extract from just ***Dyna Technologies***, where the Supreme Court held thus:

> *"24. There is no dispute that **Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award**. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. **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. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated**.*
>
> *25. Moreover, **umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an***

[1] *Dyna Technologies Private Limited v. Crompton Greaves Ltd - **(2019) 20 SCC 1***
[2] *Associate Builders vs. Delhi Development Authority - **(2015) 3 SCC 49***

> ***alternative view on facts and interpretation of contract exists****. The courts* ***need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34*** *of the Arbitration Act."*

[Emphasis Supplied]

35. In fact, the Impugned Award is well-reasoned and is a product of an analysis of the evidence and a reasonable interpretation of contract. The Learned Arbitral Tribunal as the master of the evidence has judged the quality and quantity of evidence in a manner that does not comport to a perverse reading. Considering that the Learned Arbitrator was a pre-agreed and named arbitrator and the parties had contracted him to be best placed to adjudicate any disputes between them, his professional qualifications being that of an architect, in my view it would be difficult to interfere with the Impugned Award.

36. Therefore, in my view, considering the nature of the grievances raised by the Developer, almost all of which are contentions made as if this were a full-blown appellate jurisdiction, in my opinion, there is no option but to dismiss the captioned Section 34 Petition without interfering with the Impugned Award. Accordingly, the captioned Petition is ***dismissed***. No costs.

37. 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.]