IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ARBITRATION APPEAL NO.167 OF 2026

M/s Smile Realtors Private Ltd,
a company incorporated under
the provisions of Companies Act,
through its Director, Shri Nirmal S. Athawale,
having its registered office at 38,
Navdurga Apartment, Krishna Ram Society,
Nagpur. … Appellant

//VERSUS//

Farmerbank Employees
Co-operative Housing Society Ltd.,
A society duly registered under
the provisions of the Maharashtra
Co-operative Societies Act,
bearing Registration No. NGP/HSG/749,
Through its Secretary Shri Jitendra Haware,
Having its office at the Building of
M.S. Co-operative Bank Ltd.,
Tilak Putla, Mahal, Nagpur

Also at 65, Deokashi, behind Sindhi Hindi High School,
Khamla, Nagpur 110025 …Respondent

Shri Virat Mishra, Advocate for appellant.
Shri Madhur Deo, Advocate with Shri Mohit M. Madhwani, Advocate for respondent.

CORAM : NANDESH S. DESHPANDE, J.
ARGUMENTS WERE HEARD ON : August 27, 2026
JUDGMENT PRONOUNCED ON : September 03, 2026

Judgment :

Admit. Heard finally with the consent of the learned counsel for the parties.

2. The present appeal challenges the order dated 04.06.2026, passed by the Learned In-charge District Judge-09, Nagpur in Arbitration Case NO. 123/2026, whereby the application filed by the present appellant under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') came to be rejected.

3. The present appellant also seeks an order of this Court under Section 11(6)(c) of the said Act to appoint a new arbitrator to adjudicate upon the dispute via filing a Civil Application No. 1359/2025 in Miscellaneous Civil Application No. 933/2019 under section 11 of the said Act.

4. The facts as emerging from the appeal are as under:

(i) The respondent is a Housing Society and is the owner and in possession of plot No.11, CTS No.38 admeasuring 791.99 Sq. Mtrs. situated at South Ambazari road, Laxmi Nagar, Nagpur together with a multi storied residential complex constructed thereon, known and styled as 'Indranil Apartments', consisting of 12 independent residential flats/apartments, allotted to respective members of the Respondent-Housing Society.

(ii) Said Indranil Apartments was duly constructed in or

about the year 1980;

(iii) The structure of said Indranil Apartments having become deteriorated and unsafe for proper habitation, the Respondent-Housing Society and its members decided to redevelop the said property instead of undertaking extensive repairs;

(iv) In pursuance to such decision, a tender notice was published in the daily newspaper inviting offers from the prospective developers and the appellant-Smile Realtors submitted its tender proposal, which came to be approved by the Respondent-Housing Society in its meeting dated 12.02.2012;

(v) Subsequently, a Memorandum of Understanding/ Development Agreement along with a power of attorney came to be executed between the Respondent-Housing Society and the appellant-Smile Realtors on 30.11.2012, containing an arbitration clause;

(vi) Since dispute arose between the parties, the same was referred to the sole arbitrator namely Advocate Sandip Shastri. Since, said Advocate Sandip Shastri expressed his inability to conduct arbitration, the appellant-Smile Realtors moved the Bombay High Court for appointment of arbitrator. The High Court, vide order dated 22.09.2017, appointed Hon'ble

Shri Justice A.P. Deshpande (Retired) as an arbitrator. However, subsequently, the learned arbitrator expressed his inability to continue with the arbitration proceeding, which resulted in filing Miscellaneous Civil Application No.933/2019 before the Bombay High Court and Hon'ble Shri Justice M. N. Gilani (Retired) came to be appointed as a sole arbitrator vide order dated 27.01.2020.

(vii) Since there was no effective progress in the arbitration proceedings for a considerable long period, the said learned arbitrator, Shri Justice M. N. Gilani (Retired), informed that his mandate has come to an end. Thereafter, the appellant-Smile Realtors, filed civil application before the Bombay High Court seeking substitution of the said sole arbitrator. The said application is pending adjudication.

(viii) Subsequently, in the month of May 2026, the Respondent-Housing Society has undertaken demolition activity at the site of said Indranil Apartments i. e. subject property.

(ix) Being aggrieved by the act on the part of the Respondent-Housing Society, the appellant-Smile Realtors filed an application under Section 9 of the said Act in the Court of the Learned District Judge-09, Nagpur, seeking interim injuction/measures against the respondent-Housing Society. However, the learned District Judge-09, Nagpur, rejected the

application vide order dated 04.06.2026. Being aggrieved by such rejection, the appellant-Smile Realtors, has approached this Court of law by filing an appeal under section 37 of the said Act.

(x) Furthermore, the appellant-Smile Realtors, has also moved Civil Application No. 1359/2025 in Miscellaneous Civil Application No. 933/2019, seeking substitution and appointment of new arbitrator to adjudicate upon the dispute between the parties

5. Rival contentions fall for my consideration. I have gone through the record of the matter and has also appreciated the contentions canvased by the counsel for the respective parties.

As can be seen from the impugned order the fact that an agreement was entered into on 30.11.2012 between the rival parties is not in dispute. The said agreement was titled as Memorandum of Understanding/Development Agreement. Thereafter since certain disputes arose between the parties, matter was firstly referred to Advocate Sandip Shastri. However, when he showed inability to conduct the arbitration an application was made to this Court. Vide order dated 22.09.2017 Hon'ble Shri Justice A. P. Deshpande (Retired) was appointed as an arbitrator. However, the said arbitrator also showed his inability which resulted in filing Misc. Civil Application

No.933/2019 before this Court and Hon'ble Shri Justice M. N. Gilani (Retired) came to be appointed as sole arbitrator vide order dated 27/01/2020.

6. It is the contention of the appellant that since there were some construction activities over the subject plot, it prompted it to file an application under Section 9 of the said Act. The main relief which was claimed was to restrain the respondent herein from carrying out any demolition/redevelopment construction of any nature and to appoint any third party developer.

7. It is the submission of Shri Virat Mishtra, learned counsel for the appellant that the trial Court has erred in rejection the application under Section 9 of the said Act. However, after going through the record it is seen that it is the present appellant who has not performed his part of contract. As has been rightly pointed out by Shri Madhur Deo, learned counsel for the respondent that as per the Development Agreement, the appellant here was to furnish an irrevocable and unconditional Bank Guarantee of Rs.50,00,000/- from nationalized Bank to the said Housing Society in advance before handing over possession of the property for redevelopment. Admittedly the said has not been done. The District Court has taken into

consideration the judgments relied on by the learned counsel for the respondents, more particularly the judgment of *Gurudev Developers vs. K.K. N. Co-operative Housing Society,* ***2000 (3) Mh.L.J. 131*** and reproduced relevant para i.e. para 7 in the impugned order. It has also taken into consideration decision in *Kedar Darshan Co-operative Housing Society Ltd. vs. Nooman Developers* ***2023 SCC OnLine Bom. 1084.***

8. After considering the entire case laws on record, the District Court has come to conclusion that the appellant has failed to perform his part of contract as contained in Clause-7 of the Memorandum of Understanding and therefore it would not be permissible for him to seek special performance more particularly when the agreement in question has been terminated long back.

9. After going through the judgment of the District Judge, I find no ground to interfere in appeal under Section 37 of the said Act. The findings of the District Judge are based on facts on record and more particularly omission of the appellant to furnish the Bank Guarantee. Moreover, it is an admitted fact on record that since the appointment of Hon'ble Shri Justice M. N. Gilani on 21/01/2020, no steps have been taken by the appellant to proceed with the arbitrator.

Thus, the trial Court has found no ingredient is made out for granting any interim measure such as prima face, balance of convenience and irreparable injury. Said finding cannot be said to be perverse since it is based on material which was placed on record by the agitating parties. I, therefore, find no merit in the appeal. The appeal is accordingly rejected.

No order as to costs.

(NANDESH S. DESHPANDE J.)

Asmita