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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.30951 OF 2026

Aatif Javeed Merchant ... Petitioner

Vs.

1. S.S. Crown Infrastructure
2. Rizwanali Yusufali Sayed
3. Shadabali Rizwanali Sayed ... Respondents

ATUL GANESH KULKARNI
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Date: 2026.10.13 11:24:21 +0530

Mr. Aseem Naphade with Mr. Uzair Kazi, Mr. Ambreen Khan, and Ms. Dhanashree Hublikar i/by YMK Legal for the Petitioner.

Mr. Zaal Andhyarujina, Senior Advocate with Mr. Saroj Bharucha, Mr. Chandra Naik, and Mr. Vinod Sakpal i/by Chandra Naik & Associates for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 9, 2026.

PRONOUNCED ON : OCTOBER 13, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. By this Petition, the Petitioner seeks interim protection to prevent the Respondents from selling, transferring or otherwise dealing with the units constructed on the property owned by Respondent No.1. The

Petitioner claims that he has a 75% undivided right, title and interest in the partnership business and seeks protection of his rights in the property and the units constructed thereon. The Petitioner has sought other interim reliefs.

**2.** According to the Petitioner, the following facts have given rise to the filing of the present Petition. On 31 March 2021, Respondent Nos.2 and 3, who are father and son, executed a Deed of Partnership and constituted Respondent No.1 as a partnership firm. The purpose of the firm was, among other things, to carry on the business of builders, developers, and construction contractors. Thereafter, on 27 October 2021, the Petitioner, Respondent No.2 and Respondent No.3 executed a Deed of Reconstitution of the firm (hereinafter referred to as the "said Deed"). Under the said Deed, the Petitioner was admitted as a partner of Respondent No.1. Some of the important clauses of the said Deed are as follows: a) The shares of the partners in the profits and losses of the partnership business were fixed as follows. The Petitioner was entitled to 75%, Respondent No.2 to 20% and Respondent No.3 to 5%. b) The partnership firm was required to pay interest at the rate of 12% per annum on the amounts standing to the credit of the capital and loan accounts of the partners. c) The said Deed contained clauses relating to arbitration and jurisdiction. 3. Thus, under the said Deed, the Petitioner held a 75% share in the partnership business. He was entitled to receive interest at the rate of 12% per annum on the amounts standing to his credit in the capital and loan accounts of the firm. According to the Petitioner, these were his contractual rights under the said Deed.

**3.** On 26 November 2021, the Petitioner obtained a loan of Rs.2.87 crores from YES Bank Limited and invested the amount in Respondent No.1 for the purpose of carrying out the redevelopment business. According to the Petitioner, it was agreed and understood between the parties that the entire capital amount invested by him towards redevelopment of the said property would be returned to him when the accounts were settled. He would be entitled to receive his share of the profits and the interest payable on the amount invested by him. On 30 November 2021, a registered Deed of Conveyance was executed in favour of Respondent No.1. By this conveyance, Respondent No.1 acquired ownership of a piece of land admeasuring 603.68 square metres, bearing C.S. No.2001, Byculla Division, together with the structure standing thereon and known as “Gaslitwala Building”, situated at Jacob Circle, Mumbai 400 011 (hereinafter referred to as the “said property”). The property was acquired for redevelopment. The Petitioner relies upon the balance sheet of Respondent No.1 for the period from 1 April 2022 to 31 March 2023. The balance sheet was prepared, finalised and signed by Respondent No.2. It records that the amount standing to the credit of the Petitioner's capital account was Rs.2,87,50,000/-. The amount standing to the credit of Respondent No.2's capital account was Rs.65,14,500/-, whereas the amount standing to the credit of Respondent No.3's capital account was Rs.10,00,000/-. Thus, the amount standing to the credit of the Petitioner's capital account was substantially higher than the amounts standing to the credit of the other two partners. The said balance sheet showed interest of Rs.11,23,956/- against

the Petitioner's capital account. The Petitioner relies upon the balance sheet of Respondent No.1 for the period from 1 April 2023 to 31 March 2024, which was prepared, finalised and signed by Respondent No.2. According to this balance sheet, the amount standing to the credit of the Petitioner's capital account had increased to Rs.5,38,63,956/-. The amount standing to the credit of Respondent No.2's capital account was Rs.36,10,000/-, while the amount standing to the credit of Respondent No.3's capital account remained Rs.10,00,000/-. The Petitioner points out that the amount standing to the credit of Respondent No.2's capital account had reduced from Rs.65,14,500/- to Rs.36,10,000/- because Respondent No.2 had withdrawn amounts from the firm.

**4.** The Petitioner contends that the balance sheet for the period from 1 April 2023 to 31 March 2024 does not show any interest against his capital account. This was contrary to the earlier balance sheet, which recorded interest against his capital account, and contrary to Clause 7 of the said Deed, which provided for payment of interest. The Petitioner obtained an overdraft facility of Rs.73,45,050/- from YES Bank Limited to meet the interest payable to the bank on the earlier loan of Rs.2.87 crores. According to the Petitioner, he has been paying the instalments towards these bank facilities. The monthly payments being made by him are Rs.2,82,588/- and Rs.94,800/-. On 28 November 2023, the redevelopment project was registered with the Maharashtra Real Estate Regulatory Authority (hereinafter referred to as “MahaRERA”) under the name and style of “PARK CROWN”. The new building has been constructed up to the 20th floor. The

Intimation of Disapproval was issued on 27 April 2022, and the Commencement Certificate was issued on 26 April 2023. On 7 December 2023, Respondent No.1 executed an Agreement for Sale in favour of Vaishali Sharad Shinde, an allottee, in respect of Flat No.1405 in the project. The Petitioner contends that his consent was necessary before any flat in the project could be sold. In support of this contention, he relies upon the Agreement for Sale, which records that Respondent No.1 was acting "through the hands of its partners (1) *** (2) *** (3) Aatif Javeed Merchant". The Petitioner points out that he had issued a No Objection Certificate for the sale of the said flat. The certificate was signed by Respondent No.3, as the Agreement for Sale had been executed by Respondent No.2 on behalf of Respondent No.1. According to the Petitioner, these circumstances show that his consent was required for the sale of flats in the project.

**5.** The Petitioner relies upon Section 11(1) of the Indian Partnership Act, 1932, which provides that the mutual rights and duties of partners may be decided by an agreement between them. Such an agreement may be made expressly or may be inferred from the manner in which the partners have dealt with each other in the past. The Petitioner relies upon Section 19(2)(g) of the Indian Partnership Act, 1932. This provision states that, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to transfer immovable property belonging to the firm.

**6.** According to the Petitioner, Respondent Nos.2 and 3 have sold 43 flats in the project without his knowledge or consent. The

Petitioner alleges that these sales were made behind his back and without obtaining his approval. He contends that the details disclosed by Respondent Nos.2 and 3 before MahaRERA do not show the sale of all these flats. According to him, only 14 flats have been disclosed as sold. He points out that Respondent Nos.2 and 3 have not disclosed the period during which the alleged 43 flats were sold and have not produced the Agreements for Sale relating to those transactions. The Petitioner alleges that Respondent Nos.2 and 3 have received part of the sale consideration in cash. The Petitioner disputes the case of Respondent Nos.2 and 3 that an amount of Rs.5,38,63,956/- was agreed to be paid to him so that he would leave the partnership firm. According to the Petitioner, Respondent Nos.2 and 3 first used his entire capital investment for constructing the 20-storey building and are now seeking to restrict his entitlement to the return of the amount invested by him. He contends that such a stand ignores Clause 9 of the said Deed, under which he is entitled to 75% of the profits of the partnership business.

**7.** On 4 November 2024, the Petitioner addressed a letter to the Bombay Mercantile Co-operative Bank requesting that the bank account of the partnership firm be frozen. According to the Petitioner, he took this step after discovering the alleged illegal acts of Respondent Nos.2 and 3. Thereafter, discussions took place between the parties. The Petitioner contends that it was eventually agreed that he would be paid Rs.20 crores in full and final settlement of the amounts due to him, and that the payment would be made on or before 31 July 2026. Respondent Nos.2 and

3 have a different version. According to them, the amount payable to the Petitioner was only Rs.5,27,40,000/-. The Petitioner points out that this amount is even less than the sum of Rs.5,38,63,956/- standing to the credit of his capital account. He contends that he has never relinquished his rights as a partner of Respondent No.1. According to him, he continues to be a partner and is entitled to exercise the rights available to him under the said Deed and the law.

8. On 19 March 2025, all the partners addressed a letter to the Branch Manager of Bombay Mercantile Co-operative Bank. By this letter, the bank was informed that the Petitioner's name would appear first in the list of partners instead of third. The letter stated that the Petitioner's signature would be compulsory on all cheques issued by the firm. According to the Petitioner, this letter is inconsistent with the contention of Respondent Nos.2 and 3 that he had agreed to retire from the partnership firm. He relies upon this letter to show that, even at that stage, he continued to be recognised as a partner of Respondent No.1. The Petitioner states that he received a total sum of Rs.1 crore from the bank account of Respondent No.1. The amount was paid in two instalments of Rs.50 lakhs each, on 9 October 2025 and 20 February 2026. The Petitioner disputes the allegation of Respondent Nos.2 and 3 that the alleged settlement was entered into under duress. He contends that the letter dated 19 March 2025, which was issued by all the partners, and the subsequent payments made to him do not support their allegation.

**9.** On 30 June 2026, the Petitioner addressed a letter to the Architect of the redevelopment project, stating that he was a 75% partner of Respondent No.1 and was withdrawing the No Objection Certificate previously issued by him to the Architect for redevelopment of the said property. On the same date, the Architect addressed a letter to Respondent Nos.2 and 3 informing them that no redevelopment work would be carried out and calling upon them to respond to the Petitioner's letter. On 13 August 2026, the Petitioner issued a legal notice to the Respondents. By this notice, he called upon them to provide the accounts of all flats sold in the redeveloped building and to furnish copies of the registered Agreements for Sale executed in favour of the allottees. Respondent Nos.2 and 3 replied by a letter dated 27 August 2026, contending, among other things, that the Petitioner was entitled only to the principal amount invested by him in Respondent No.1 and had no entitlement. Thereafter, by a letter dated 14 September 2026, Respondent Nos.2 and 3 raised contentions which, according to the Petitioner, were false and had been raised as an afterthought. The Petitioner points out that Respondent Nos.2 and 3 have claimed to have paid part of the sale consideration for acquiring the said property, but the amount mentioned in their claim has been left blank. In these circumstances, the Petitioner has approached this Court by filing the present Petition.

**10.** Mr. Naphade, learned Advocate appearing for the Petitioner, submits that Respondent Nos.2 and 3 have taken undue advantage of their position as the working partners of Respondent No.1. They

were entrusted with the responsibility of conducting the day-to-day business of the partnership firm. However, according to the Petitioner, they have used this position to exclude him from the management and functioning of the firm.It is submitted that Respondent Nos.2 and 3 have attempted to take exclusive control of the affairs, assets, finances, and redevelopment project of Respondent No.1 without informing the Petitioner and without obtaining his consent or authority. The Petitioner contends that such conduct is contrary to his rights as a partner holding a 75% share in the firm.

**11.** Learned Advocate for the Petitioner submits that Respondent Nos.2 and 3 have dealt with several units forming part of the redevelopment project and have agreed to sell them without obtaining the Petitioner's prior consent. According to the Petitioner, at least 12 units have been dealt with in this manner. He contends that this has been done despite his holding a 75% share in the partnership firm and despite the units and the sale proceeds being assets or amounts receivable by Respondent No.1. It is alleged that Respondent Nos.2 and 3 have entered into transactions which require examination, as they may be prejudicial to the interests of the partnership firm. These transactions are alleged to include inflated payments, kickbacks, commissions and cash components. The Petitioner alleges that Respondent Nos.2 and 3 have diverted or taken money and other benefits belonging to the firm for their personal use, or have routed such amounts through the accounts of persons connected with them. According to the Petitioner, these acts have caused serious loss to Respondent No.1 and have

adversely affected his interests as a partner.

**12.** The Petitioner submits that the acts and conduct of Respondent Nos.2 and 3 have resulted in serious disputes between the partners. These disputes relate to the management and affairs of Respondent No.1, the maintenance and disclosure of partnership accounts, the use and alleged diversion of partnership funds, the dealings with the partnership property, and the sale of units in the redevelopment project. The disputes concern the Petitioner's entitlement to his share in the partnership assets and profits, as well as the alleged failure of Respondent Nos.2 and 3 to perform their duties as partners. According to the Petitioner, all these disputes arise out of or relate to the partnership business and the said Deed. They are, therefore, disputes which can be referred to arbitration under the arbitration clause contained in the said Deed. The Petitioner states that he intends to refer these disputes to arbitration in accordance with law and seeks interim protection from this Court in the meantime.

**13.** Mr. Andhyarujina, learned Senior Advocate appearing for the Respondents, submits that the Deed of Reconstitution of Firm dated 27 October 2021 does not contain any condition or restriction preventing a partner from dealing with any unit constructed or proposed to be constructed in the project of Respondent No.1. According to him, the said Deed does not require the Respondents or any other partner to obtain the Petitioner's consent before dealing with such units. The learned Senior Advocate submits that the Petitioner has confined the relief sought in the present Petition to an injunction restraining the

Respondents from dealing with the units constructed or proposed to be constructed in the project known as “Park Crown”. The Petitioner relies upon Section 19(2)(g) of the Indian Partnership Act, 1932, in support of this relief. However, according to the Respondents, the reliance placed upon this provision is misplaced for the following reasons:

a) The Petitioner seeks the injunction on the basis of Section 19(2)(g) of the Indian Partnership Act, 1932 (hereinafter referred to as “the Act”);

b) Section 19(1) of the Act provides that, subject to Section 22, an act done by a partner in the usual course of the business carried on by the firm binds the firm. The authority of a partner to bind the firm in this manner is known as his implied authority;

c) Section 19(2)(g) of the Act provides that, in the absence of any usage or custom of trade to the contrary, a partner's implied authority does not include the power to transfer immovable property belonging to the firm;

d) Clause 3 of the Deed of Reconstitution of Firm dated 27 October 2021 describes the business of Respondent No.1 as that of builders, developers and construction contractors.

**14.** Learned Senior Advocate for the Respondents submits that Section 19(2)(g) of the Act must be read along with Section 19(1). According to him, the two provisions must be interpreted together, so that the meaning of one provision does not defeat the purpose of the other. It is contended that the units constructed or proposed

to be constructed in the project are the stock in trade or inventory of Respondent No.1, as the firm is engaged in the business of builders and developers. According to the Respondents, such units cannot be treated as immovable property belonging to the firm for the purpose of applying Section 19(2)(g). Their sale is part of the ordinary business of the firm. Therefore, the Respondents submit that the sale of these units by Respondent Nos.2 and 3 falls within their implied authority under Section 19(1) of the Act. The Respondents rely upon the Petitioner's own case that he was responsible for providing funds for the project, whereas Respondent No.2 was to act as the working partner. They contend that the Petitioner contributed only Rs.5.27 crores to the firm and did not make any contribution after 3 August 2025.

**15.** The Respondents have placed on record details of the amounts contributed by the Petitioner and Respondent Nos.2 and 3, the work carried out for the project, the expenses incurred, the units sold or otherwise transferred, and the liabilities which remain outstanding. They have provided details of the future expenses expected to be incurred for completing the project. According to the Respondents, these details are relevant for considering the Petitioner's claim and deciding whether any interim relief should be granted.

**16.** On the question of maintainability, learned Senior Advocate for the Respondents submits that the present Petition is not maintainable. He points out that, according to the Petitioner's own case, an oral agreement or settlement was arrived at between the parties under which the Petitioner agreed to retire from

Respondent No.1 upon receiving Rs.20 crores. The Respondents contend that the Petitioner has approached this Court on the basis of the alleged oral agreement or settlement. According to them, that alleged settlement could not have included an arbitration agreement. They, therefore, submit that the Petitioner cannot seek interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, on the basis of such an arrangement. The Respondents state that the actual agreement between the parties was that the Petitioner would retire from the partnership firm upon receiving Rs.5,38,63,956/-. They contend that, in part payment of this amount, they have paid Rs.1,00,00,000/- to the Petitioner. On this basis, the Respondents dispute the Petitioner's claim that he continues to have the rights of a partner and is entitled to the interim reliefs sought in the Petition. In conclusion, learned Senior Advocate for the Respondents submits that the Petitioner has not established any ground for granting the interim reliefs sought in the present Petition. The Respondents, therefore, pray that the Petition be dismissed.

## REASONS AND FINDINGS:

**17.** I have considered the submissions advanced by the learned Advocates appearing for the Petitioner and the Respondents. The main question is whether the Petitioner has made out a case for restraining Respondent Nos. 2 and 3 from dealing with the property and the units constructed or proposed to be constructed in the redevelopment project known as “Park Crown”. The next question is whether sufficient protection is required so that the disputes between the partners do not make the arbitral

proceedings ineffective.

**18.** While looking at the rights of the partners, the first thing to be considered is the Deed of Reconstitution. Clause 3, under the heading "BUSINESS", states as follows:

> "That the business of partnership firm shall be that of Builders, Developers, Construction Contractors, etc. and/or any other business as the partners unanimously decided in writing."

**19.** From this clause, it can be seen that Respondent No. 1 was formed for carrying on the business of builders, developers and construction contractors. In such business, selling the flats or units constructed in the project is normally part of the work. Therefore, it would not be right to stop every sale only because the Petitioner has not approved it. However, the nature of the business alone does not decide whether a partner has authority to transfer the immovable property of the firm. The nature of the business and the authority of the partner are two different things. Both aspects will have to be considered before deciding whether a particular sale was within the authority of the concerned partner.

**20.** Clause 9 of the Deed of Reconstitution deals with the sharing of profits and losses between the partners. After deducting the business expenses, the profits or losses are to be shared in the following manner:

> "Mr. Rizwanali Yusufali Sayed : 20%
>
> Mr. Shadabali Rizwanali Sayed : 05%
>
> Mr. Aatif Javeed Merchant : 75%"

**21.** Thus, the Petitioner has a seventy-five per cent share in the profits and losses of the firm. This shows that he has a substantial interest in the partnership business. However, it does not mean that he owns seventy-five per cent of every flat constructed in the project. It does not give him a right to stop every transaction made by the firm. The rights of a partner in the property of the firm will have to be decided by looking at the partnership deed and the Indian Partnership Act, 1932. A share in the profits cannot be treated as personal ownership of a particular part of every property belonging to the firm.

**22.** In *Addanki Narayanappa v. Bhaskara Krishnappa*, (1966) 3 SCR 400, the Supreme Court has held that a partner does not normally have a right to claim or deal with any particular property of the firm as his own property. As long as the partnership continues, the partner is entitled to receive his agreed share of the profits. If the partnership is dissolved or the partner retires, his share has to be worked out by finding the value of his interest in the net assets of the firm after paying its liabilities and other amounts which are payable. This principle will have to be kept in mind while considering the Petitioner's claim based on his seventy-five per cent share. He cannot claim personal ownership of seventy-five per cent of every flat merely because he is entitled to seventy-five per cent of the profits. However, this does not mean that he cannot question a transaction if he says that it was made without authority or against the interest of the firm.

**23.** The next question is about the effect of Section 19 of the Indian Partnership Act, 1932. Section 19(1) provides that an act

done by a partner in the usual course of the business of the firm will bind the firm, subject to Section 22 of the Act. This authority is known as implied authority. Respondent Nos. 2 and 3 rely upon this provision and submit that the sale of flats is part of the usual business of Respondent No. 1. The Court cannot ignore that Respondent No. 1 is carrying on the business of builders and developers and that selling units may be an ordinary part of such business. Therefore, every sale cannot be treated as being outside the usual business of the firm. However, Section 19 cannot be read only by looking at sub-section (1). Section 19(2) provides that certain acts are not covered by the implied authority of a partner, unless there is a usage or custom of trade to the contrary. Clause (g) concerns the transfer of immovable property belonging to the firm. In other words, the normal authority of a partner does not permit him to transfer the immovable property of the firm, unless the necessary authority is otherwise established or a relevant usage or custom of trade applies. This restriction cannot be ignored merely because the firm is carrying on business connected with immovable property. It will have to be examined whether the particular transaction was within the authority of the partner under the partnership deed and the Act, or whether any applicable usage or custom of trade permitted the transaction. At the same time, Section 19(2)(g) cannot be understood to mean that a partnership firm carrying on real estate development can never sell the flats constructed by it. Such an interpretation would not take into account the nature of the business mentioned in Clause 3 of the Deed of Reconstitution. The question is whether Respondent

Nos. 2 and 3 had the required authority to enter into the transactions in the manner alleged by the Petitioner. This includes the allegation that some units were sold without disclosure and without obtaining authority wherever it was required. The fact that selling flats is part of the ordinary business of a developer is relevant. But that fact alone cannot decide whether a partner had authority to enter into each and every transaction.

**24.** The Deed of Reconstitution placed before this Court does not contain any express clause saying that written consent of all the three partners must be obtained before selling every unit in the project. The Court cannot introduce a condition in the deed which the partners have not expressly agreed upon. However, the absence of such a clause does not mean that Respondent Nos. 2 and 3 had unlimited authority to transfer all the immovable property belonging to the firm. The Respondents rely upon the nature of the business and the position of Respondent No. 2 in managing the project. The Petitioner disputes the extent of this authority. On the material available, it is not possible to decide whether any usage or custom of trade, or the manner in which the partners dealt with each other, gave Respondent Nos. 2 and 3 the authority which they are claiming.

**25.** The decision of this Court in *Vikas Babulal Khandelwal v. Shree Krishna Sai Development Corporation and Others*, Comm. Arbitration Petition (L) No. 25100 of 2026, decided on 2 September 2026, considered whether units forming part of the developer's stock-in-trade could be sold in the ordinary course of business. The Court held that the fact that the units are stock-in-

trade is relevant, but this fact alone does not decide whether the concerned partner had authority to enter into a particular transaction. However, in that case, the partnership deed contained an express restriction requiring written consent for transfer of partnership property. The Deed of Reconstitution in the present case does not contain the same restriction. Therefore, the principle that the actual authority for a transaction has to be examined is relevant here, but the decision cannot be applied without keeping in mind this important difference between the two deeds.

**26.** The Petitioner relies upon the Agreement for Sale dated 7 December 2023, executed by Respondent No. 1 in favour of Vaishali Sharad Shinde in respect of Flat No. 1405. According to the Petitioner, the agreement records that the transaction was executed "through the hands of its partners (1) *** (2) *** (3) Aatif Javeed Merchant". He states that he had issued a No Objection Certificate for the sale and that the certificate was signed by Respondent No. 3, while Respondent No. 2 executed the agreement on behalf of the firm. This document supports the Petitioner's case to the extent that his participation was obtained in at least one sale in the project. It may help the Court to understand how the partners were dealing with such transactions and what authority they considered necessary while conducting the business. However, the Agreement for Sale relating to Flat No. 1405 does not prove that the Petitioner's written consent was required for every sale in the project. It concerns one particular transaction and has to be considered according to its own facts. The No Objection Certificate may have been obtained because of the special

circumstances of that transaction. It may indicate that the partners were following a particular practice while dealing with each other. The material available does not establish which of these possibilities is correct. One transaction alone cannot prove that the same practice was followed in every case. At the same time, the Respondents cannot completely ignore this document, particularly when the Petitioner relies upon it to show that his participation in the project transactions was contemplated by the partners.

**27.** The allegation regarding the number of units sold requires consideration. The Petitioner states that forty-three flats were sold without his knowledge, whereas the disclosure made before MahaRERA shows only fourteen flats as sold. He states that the Respondents have not produced the corresponding agreements for sale or disclosed the period during which the remaining flats were sold. The Respondents submit that they have provided details of the units sold or otherwise dealt with, the amounts contributed by the partners, the expenses incurred and the liabilities of the project. However, the material described before this Court does not contain a explanation of each transaction which reconciles the forty-three sales alleged by the Petitioner with the fourteen sales shown in the disclosure. In these circumstances, it would not be to hold that all the forty-three sales were unauthorised. Equally, the difference in the figures alone cannot establish that the Respondents concealed transactions, accepted cash or diverted money. These questions will require examination of the relevant agreements, accounts and payment records.

**28.** The Petitioner has alleged that Respondent Nos. 2 and 3 accepted cash payments, showed inflated payments and diverted money for their personal benefit. These allegations have not been established from the material available. Therefore, it would not be to record a finding of fraud, misappropriation, or dishonesty. However, merely because these allegations have not yet been proved, the circumstances requiring protection cannot be ignored. The allegations regarding the number of sales, the difference in the disclosed figures, the dispute about the accounts and the Petitioner's request for copies of the sale agreements show that the dealings of the firm need examination. The relevant records will therefore have to be preserved so that the transactions can be examined during the arbitral proceedings. This is necessary to ensure that the rights of the parties are not affected by transactions or by loss of documents which may be required later for deciding the dispute.

**29.** The Petitioner has relied upon the letter dated 19 March 2025 addressed by all the partners to the Branch Manager of Bombay Mercantile Co-operative Bank. According to the Petitioner, this letter stated that his name would appear first in the bank records instead of third and that his signature would be required on all cheques. He submits that this letter goes against the Respondents' case that he had agreed to retire from the partnership. The Respondents rely upon the alleged oral settlement and the payment of ₹1 crore to the Petitioner. The bank letter is relevant because it shows that the Petitioner continued to be included in the banking arrangements of the firm and was given

a role in operating its bank account. However, the effect of this letter will have to be considered along with the alleged settlement, the later conduct of the parties and the other documents. The letter does not establish whether a settlement was later concluded or whether the Petitioner agreed to retire from the firm. The amount contributed by the Petitioner is relevant, although it does not decide whether the other partners had authority to deal with the property of the firm. The balance sheets relied upon by the Petitioner show substantial amounts standing to his credit in the capital account. According to him, he raised a loan of ₹2.87 crores from YES Bank Limited and invested that amount in the redevelopment business of the firm. He states that he obtained an overdraft facility to pay the interest on the earlier loan and that he continues to pay the amounts due under these facilities. If these facts are established from the accounts and bank records, they show that the Petitioner has a substantial interest in the project. The Respondents dispute the extent of his contribution and state that he did not contribute any amount after 3 August 2025. The actual contribution of each partner and the liabilities of the firm will have to be determined from the relevant accounts and documents. For the present purpose, the material shows that the dispute concerns the management and use of the assets of the firm, in which the Petitioner claims to have invested a substantial amount.

**30.** I now consider the objection that the Petition is not maintainable because the Petitioner relies upon an oral settlement. Clause 15 of the Deed of Reconstitution provides:

> "That in the case of dispute arising among the parties hereto on any matter in connection with the partnership business or these presents or its interpretation, in which case the provision of the Indian Arbitration Act, 1940 and any modification thereof shall apply."

**31.** This clause is in writing and provides for arbitration of disputes connected with the partnership business or the deed. The reference to the Indian Arbitration Act, 1940, does not make the arbitration clause invalid. In *Purushottam s/o Tulsiram Badwaik v. Anil and Others*, (2018) 8 SCC 95, the Supreme Court held that an incorrect reference to the 1940 Act does not invalidate an arbitration agreement if the agreement otherwise satisfies the requirements of Section 7 of the Arbitration and Conciliation Act, 1996. The 1996 Act applies to arbitral proceedings commenced after it came into force. Therefore, the arbitration clause in the present deed cannot be treated as ineffective only because it refers to the earlier enactment.

**32.** The objection raised by the Respondents on the basis of the alleged oral settlement cannot be accepted as a sufficient reason to dismiss the Petition. The Petitioner states that the parties had agreed that he would receive ₹20 crores in full and final settlement. The Respondents say that the agreed amount was ₹5,38,63,956/- and that the Petitioner had agreed to retire from the firm. Thus, the parties have given different versions about the amount, the terms and the effect of the alleged settlement. The material placed before this Court shows that ₹1 crore was paid to the Petitioner. However, the purpose and effect of this payment are disputed. The payment alone does not establish whether it was

made towards the alleged settlement, repayment of the capital contribution or for some other purpose. The fact that the alleged settlement is oral does not mean that the written arbitration agreement contained in the Deed of Reconstitution has stopped operating. Whether the parties entered into a settlement, whether it was intended to bring the Petitioner's rights as a partner to an end and whether it settled all the disputes are matters which cannot be decided only on the basis of the different statements made by the parties. The material available does not show a written deed of retirement or a reconstitution of the firm giving effect to the alleged retirement. The bank letter dated 19 March 2025, relied upon by the Petitioner, is relevant while considering this issue. Therefore, the objection to the maintainability of the Petition is rejected. This finding is only for deciding the request for interim protection. The Respondents are free to raise the alleged settlement and its legal effect before the arbitral tribunal.

**33.** The principles governing the grant of relief under Section 9 of the Arbitration and Conciliation Act, 1996, are well settled. In *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*, (2007) 7 SCC 125, the Supreme Court held that the power under Section 9 has to be exercised by keeping in mind the principles normally applied while granting interim injunctions. The Court has to see whether a prima facie case is made out, where the balance of convenience lies and what may happen if the relief is granted or refused. In *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited*, (2022) 20 SCC 178, the Supreme Court held that the power under Section 9 is wide and is not limited by a

strict application of every technical requirement of Order XXXVIII Rule 5 of the Code of Civil Procedure. However, these decisions do not mean that interim relief must be granted merely because serious allegations have been made. There must still be material showing why protection is required. The order must be limited to what is reasonably necessary in the circumstances of the case.

**34.** The judgment of the Supreme Court in *Bina Murlidhar Hemdev*, is relevant while considering the dispute about the authority of Respondent Nos. 2 and 3 to sell the units constructed in the redevelopment project. In paragraph 46 of that judgment, the Supreme Court considered Section 19 of the Indian Partnership Act, 1932, and the authority of a partner to deal with immovable property belonging to the firm. The Court held that the implied authority of a partner to carry on the ordinary business of the firm does not authorise the partner to transfer the immovable property of the firm. Such authority must be expressly given, unless a relevant usage or custom of trade to the contrary is established. The Court considered a clause in the partnership deed which stated that the partner managing the affairs of the firm could bind the other partners by his acts. It held that such a general clause did not amount to express authority to transfer the immovable property of the firm.

**35.** The principle laid down by the Supreme Court has to be applied by considering the facts and terms of the partnership deed in the present case. Clause 3 of the Deed of Reconstitution dated 27 October 2021 states that Respondent No. 1 carries on the business of builders, developers and construction contractors.

Respondent Nos. 2 and 3, therefore, submit that the sale of flats is part of the ordinary business of the firm and comes within their implied authority as working partners. The Petitioner submits that the units belong to the firm and that Respondent Nos. 2 and 3 could not sell them without his consent. In view of the law laid down by the Supreme Court, the fact that the sale of flats is connected with the ordinary business of a developer cannot,, decide whether the concerned partner had authority to transfer the property. At the same time, the judgment in *Bina Murlidhar Hemdev* does not mean that every sale of a flat by a partnership firm carrying on real estate development is necessarily unauthorised. The question will have to be decided by considering the nature of the property, the terms of the partnership deed, the authority given to the concerned partner and any applicable usage or custom of trade. In the present case, the Deed of Reconstitution does not expressly state that written consent of all partners must be obtained before every unit is sold. This is an important difference. The Court cannot add such a condition to the deed when the partners have not expressly agreed to it. However, the absence of such a condition does not establish that Respondent Nos. 2 and 3 had unrestricted authority to transfer every unit belonging to Respondent No. 1. The said judgment explains the nature of a partner's interest in the property of the firm. A partner does not become the individual owner of a corresponding percentage of every item of partnership property merely because he is entitled to that percentage of the profits. The Petitioner's entitlement to seventy-five per cent of the profits under Clause 9 of

the Deed of Reconstitution must therefore be distinguished from a claim of personal ownership over seventy-five per cent of each flat. This does not take away his right to question a transaction which is alleged to have been entered into without authority or contrary to the partnership arrangement. His rights will have to be decided in accordance with the deed and the Partnership Act. In these circumstances, the judgment in *Bina Murlidhar Hemdev* supports the Petitioner's submission that the implied authority of a partner cannot be treated as authority to transfer immovable property belonging to the firm. However, the judgment does not establish that every sale of a unit in the present project required the Petitioner's prior consent. The Court will have to consider the actual terms of the Deed of Reconstitution, the nature of the firm's business, the authority of Respondent Nos. 2 and 3 and the material relating to the transactions undertaken. For deciding the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996, the protection granted must preserve the Petitioner's rights and the subject matter of the dispute without unnecessarily stopping the ordinary business of the firm. The final question regarding the authority for individual transactions and the rights of the parties will remain open for decision in the arbitral proceedings.

**36.** After applying these principles to the present case, I find that the Petitioner has shown a prima facie basis for seeking some protection. There is a written partnership deed and an arbitration clause. There is a dispute about the authority of Respondent Nos. 2 and 3 to deal with the assets of the firm, the disclosure of sales and

the accounts of the firm. The balance sheets relied upon by the Petitioner show that he claims to have a substantial interest in the project. The parties dispute whether the Petitioner continues to enjoy his rights as a partner or whether those rights came to an end because of the alleged settlement. These disputes concern the management and assets of Respondent No. 1 and arise out of the partnership arrangement. If transactions are entered into without authority or disclosure, rights of third parties may arise, and it may become more difficult to grant effective relief in the arbitral proceedings. However, I am unable to grant the prayer in its widest form. The Petitioner seeks to restrain the Respondents from dealing with every unit constructed or proposed to be constructed in the project. Respondent No. 1 is carrying on the business of development, and sale of units may be necessary for continuing that business and meeting the expenses required for completing the project. A complete restriction on all sales, transfers and dealings, without considering the nature and authority of each transaction, may affect the ongoing work, the obligations of the firm and the persons who have entered into transactions with it. On the material available, the Petitioner has not established that every proposed sale is unauthorised or that all dealings with every unit must be stopped. The Court cannot presume that every transaction entered into by Respondent Nos. 2 and 3 is unlawful merely because a dispute has arisen between the partners.

**37.** The balance of convenience, therefore, requires a limited order. The Petitioner has a substantial interest in the firm and has raised questions about the sales and management of the project

which require an explanation. On the other hand, the Respondents are entitled to carry on the ordinary business of the firm in accordance with the partnership deed and the law. The protection must prevent unauthorised dealings with the assets of the partnership without stopping the entire redevelopment project. Any sale, transfer or creation of third-party rights in respect of units which are not covered by transactions entered into before this order must be supported by authority under the Deed of Reconstitution and the Indian Partnership Act, 1932. The Respondents cannot avoid examination of their authority merely by saying that the units are stock-in-trade. Equally, the Petitioner cannot claim right to stop every transaction only because he has seventy-five per cent share in the profits of the firm.

38. For the same reason, the Respondents will have to preserve and make available the records required for understanding the transactions entered into. The difference between the forty-three sales alleged by the Petitioner and the fourteen sales stated to appear in the MahaRERA disclosure cannot be resolved without examining the agreements and accounts. The Petitioner has sought copies of the agreements for sale and the accounts relating to the units sold. The Respondents state that they have provided details of the sales, costs and liabilities. In these circumstances, the course is to preserve the sale agreements, payment details, accounts and other records relating to the project and to ensure that complete disclosure is made. This will help the arbitral tribunal to examine the dispute and will avoid difficulty if any relevant record is lost or not made available.

**39.** For the reasons stated above, the Petition deserves to be partly allowed. The Petitioner requires protection against unauthorised dealings with the units, and the records relating to the project will have to be preserved. However, the complete restraint sought in paragraph 29(a), which covers every unit constructed or proposed to be constructed without making any distinction, would be wider than what is required on the material available. The order must be limited to what is necessary for protecting the subject matter of the dispute, while allowing Respondent No. 1 to continue its ordinary construction and development business in accordance with the partnership deed and the law.

**40.** In the result, the following order is passed:

(i) The Petition is partly allowed;

(ii) Pending commencement and during the pendency of the arbitral proceedings, Respondent Nos. 2 and 3, their agents, representatives, nominees and any person claiming through or under them are restrained from selling, transferring, alienating, encumbering, parting with possession of or creating third-party rights or interests in respect of any unsold unit in the "Park Crown" project otherwise than in accordance with the Deed of Reconstitution dated 27 October 2021 and the provisions of the Indian Partnership Act, 1932;

(iii) Before entering into any transaction for sale, transfer or creation of third-party rights in respect of an unsold unit,

Respondent Nos. 2 and 3 shall give the Petitioner written disclosure of the proposed purchaser, the full consideration, the mode and schedule of payment, and the material terms of the proposed transaction, sufficiently in advance to enable the Petitioner to raise any objection in accordance with law. If there is a dispute concerning the authority to enter into a proposed transaction, the parties shall be at liberty to seek appropriate directions from the arbitral tribunal or the Court in accordance with law;

(iv) Within four weeks from the date of this order, Respondent Nos. 2 and 3 shall provide to the Petitioner a complete statement of the units in the "Park Crown" project which have been sold, booked, agreed to be sold, remain unsold or are otherwise encumbered. The statement shall include, to the extent applicable, the date of each transaction, the particulars of the purchaser, the consideration agreed, the consideration received or receivable, the mode of payment, and the relevant entries in the books of account and bank records. The Respondents shall provide copies of the agreements for sale and other documents relating to those transactions, subject to any order or restriction imposed by a competent authority;

(v) Respondent Nos. 2 and 3 shall preserve the books of account, bank statements, sale agreements, payment records, correspondence, title documents and other records relating to the property and the redevelopment project. They shall not destroy, alter, conceal or part with custody of any such

record in a manner that may affect the rights of the parties or the subject matter of the arbitration;

(vi) This order does not invalidate or cancel any agreement for sale executed before the date of this order, nor does it determine the rights of any purchaser under such agreement. The validity, authority and effect of any particular earlier transaction shall remain open for determination in accordance with law;

(vii) Nothing in this order shall prevent Respondent No. 1 from continuing construction and development work in the project, provided that any transaction creating third-party rights in the units is undertaken in accordance with the Deed of Reconstitution and the Indian Partnership Act, 1932, and subject to the protection directed above;

(viii) If arbitral proceedings have not commenced, the Petitioner shall take necessary steps to commence them within the period prescribed under Section 9(2) of the Arbitration and Conciliation Act, 1996, or within such time as may be permitted by the Court in accordance with law;

(ix) The interim protection granted by this order shall remain subject to any order passed by the arbitral tribunal or by this Court in accordance with law;

(x) All findings recorded in this judgment are prima facie and only for the purpose of deciding the present Petition. The arbitral tribunal shall decide all disputes on the basis of the pleadings and evidence, uninfluenced by the

observations made herein;

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

(AMIT BORKAR, J.)