AGK

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

COMM ARBITRATION PETITION (L) NO.26932 OF 2026

Bindu Raheja & Sons LLP ... Applicant

Vs.

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.10.19 14:41:09 +0530

1. Stephen Francis Coutts
2. Lalita Mary Remedios
3. Virendra Coutts
4. Walter Coutts
5. Patrick Devindra Coutts
6. Eric H. Coutts
7. Clarence P. Coutts
8. Nalini Rebeiro ... Respondents

Mr. Hasmit Trivedi with Mr. Indra Kumar Lahoti i/by Praxis Legal for the Applicant.

Mr. V. Mannadiar i/by Mannadiar & Co., for the Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 14, 2026.

PRONOUNCED ON : OCTOBER 19, 2026

JUDGMENT:

1. I have considered the arguments made on behalf of the Petitioner and the Respondents, along with the material referred to in the Petition. The present Petition is filed under Section 9 of the

Arbitration and Conciliation Act, 1996, in respect of the registered Development Agreement dated 29 November 2024. The Petitioner wants to protect its rights under this Agreement and prevent the Respondents from creating difficulties in the redevelopment of the property known as “Delana”, situated at Chembur, Mumbai.

2. The Respondents have opposed the Petition mainly on three grounds. First, they say that no notice under Section 21 of the Act was issued before filing the Petition. Second, they say that the Petitioner has not shown any real intention to refer the disputes to arbitration. Third, they contend that granting the reliefs asked for would amount to giving the final relief at the interim stage.

3. The first objection of the Respondents is that the Petitioner did not issue a notice under Section 21 of the Act before filing this Petition. In my view, the Petition cannot be rejected as not maintainable only because such notice was not issued before approaching this Court. Section 9 of the Act allows a party to approach the Court for interim protection even before the arbitration proceedings have started. The Supreme Court in *Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479, and *Firm Ashok Traders v. Gurumukh Das Saluja*, (2004) 3 SCC 155, has explained that arbitration need not be pending and that a notice invoking arbitration need not always be issued before filing a Petition under Section 9. What is necessary is that there should be a valid arbitration agreement and that the party approaching the Court should genuinely intend to refer the disputes to arbitration. Therefore, the absence of a notice under Section 21,, cannot be a ground to reject this Petition. At the same time, the

objection of the Respondents cannot be ignored merely because the law allows a party to file a Section 9 Petition before arbitration begins. The Petitioner must show that it genuinely wants to refer the disputes to arbitration and has not approached the Court only to obtain interim orders without taking any further steps towards arbitration. Section 9 is intended to protect the subject matter of the dispute and to ensure that the arbitration remains effective. It cannot be used as a permanent remedy in place of arbitration.

4. The second objection of the Respondents is that the Petitioner has not shown any real intention to refer the disputes to arbitration. In paragraph 61 of the Petition, the Petitioner has stated:

> "The Petitioner submits that the dispute/s between the parties may be referred to Arbitration at an appropriate stage. In such arbitration the Petitioner shall inter alia pray for specific performance of the said Development Agreement."

5. The words "may be referred to Arbitration at an appropriate stage" do not clearly show that the Petitioner intends to start arbitration immediately. The Petitioner has not clearly stated when it proposes to take the necessary steps. Therefore, the Respondents have some basis for saying that the intention to arbitrate must be genuine and should not remain merely a statement made in the Petition. However, this sentence cannot be read without considering the other statements in the Petition. In the same paragraph, the Petitioner has stated that it will seek specific performance of the Development Agreement in arbitration. Clause

85 of the Agreement contains an arbitration clause. The Petition has been filed because disputes have arisen regarding the performance of the Agreement and the alleged breach of its terms. The Petitioner is seeking protection of its rights under the Agreement and has stated that the main relief of specific performance will be sought before the arbitral tribunal.

6. In these circumstances, I am not inclined to reject the Petition at the beginning on the ground that the Petitioner has no intention to arbitrate. The Petitioner has shown that a dispute has arisen which can be referred to arbitration under Clause 85. However, the intention stated in paragraph 61 must now be acted upon. The Petitioner cannot obtain interim protection from the Court and then continue postponing arbitration indefinitely by saying that it will start arbitration at an appropriate stage. Section 9(2) of the Act provides that, where interim measures are granted before the arbitration proceedings begin, the arbitral proceedings must commence within ninety days from the date of the order, or within such further time as the Court may allow. Therefore, if interim protection is granted before arbitration begins, the Petitioner must be directed to take the necessary steps to commence arbitration within the period permitted by law.

7. I now turn to the dispute between the parties and the terms of the Development Agreement. The Petitioner relies upon the registered Development Agreement dated 29 November 2024. Under Clause 6, the Petitioner was given the right to redevelop the land and the existing building. Clause 11 provides that the

Respondents would receive eight flats, each having a carpet area of 600 square feet, along with four car parking spaces in the new building. The same clause provides that the Petitioner would settle the claims of the non-consenting members at its own cost. Clause 125 states that the Development Agreement would replace the earlier understandings, writings, and agreements between the parties. Clause 128 provides that the Agreement contains the entire understanding between the parties regarding the development. Clause 129 further states that the Respondents would not be entitled to monthly compensation, shifting charges, a security deposit or a corpus fund. At this stage, the registered Development Agreement is an important document for considering the Petitioner's case. According to the Petition, the parties discussed and negotiated the terms over a period of time, exchanged correspondence, executed an earlier notarised agreement and thereafter entered into the registered Development Agreement. Paragraph 23 of the Petition refers to a letter dated 29 November 2024 addressed by the Respondents to the Society. Through this letter, the Respondents informed the Society about the important terms of the proposed redevelopment. The Petitioner states that the letter mentioned that the Respondents would together receive 4,800 square feet in the redeveloped project. This area is equal to eight flats of 600 square feet each, as stated in Clause 11. At this stage, the letter supports the Petitioner's case that the area to be given to the Respondents was recorded after negotiations and was not added later by the Petitioner on its own.

8. The case of the Respondents, as understood from the submissions made before me, is that the Development Agreement does not correctly record the commercial understanding between the parties and that granting the reliefs would amount to giving final relief at the interim stage. The Petition refers to emails dated 6 and 7 November 2025, in which Respondent No. 1 is stated to have questioned the terms of the Agreement and claimed that the Petitioner had agreed to provide flats of 900 square feet each. The Petitioner denies having given any such assurance. It relies on the registered Agreement and says that the Respondents are now asking for benefits beyond what was agreed. At this stage, this Court is not required to finally decide whether any oral assurance was given during the negotiations or whether the parties had arrived at a different commercial understanding. If such disputes arise under the arbitration agreement, they will have to be decided by the arbitral tribunal after considering the evidence produced by both sides. However, for the limited purpose of deciding this Petition under Section 9, the registered Agreement, when read with the letter dated 29 November 2024, supports the Petitioner's case that the entitlement of the Respondents was recorded in writing.

9. The Petitioner has relied upon the steps taken, and the money spent after the Development Agreement was executed. Paragraphs 25 to 30 of the Petition refer to settlements concerning Flat Nos. 4, 5, 6 and 9 and the arrangements relating to Flat Nos. 7 and 8. The Petitioner states that it paid Rs.2.75 crore for Flat No. 5, Rs.3.13 crore for Flat No. 6, Rs.1.55 crore for Flat No. 4 and one

garage, and Rs.2.50 crore for Flat No. 9. According to the Petition, the necessary documents were executed and possession of these premises was handed over to the Petitioner. The Petitioner has referred to the arrangements made in respect of Flat No. 3 with Christine Marian Dias, including the consent terms dated 18 June 2026 and the payments made towards her temporary alternate accommodation. It has further stated that it paid more than Rs.13 lakh to Shawn Monteiro and is continuing to pay monthly compensation under the relevant agreements. In paragraph 38 of the Petition, the Petitioner states that it has invested more than Rs.15 crore in the redevelopment project. This is a substantial amount. However, merely stating that money has been spent does not prove the entire case of the Petitioner or establish that the Respondents have committed a breach of the Agreement. The amount spent will have to be considered along with the agreements, payment records and other evidence. Even so, at this interim stage, the Petition refers to transfer documents, possession of several premises, arrangements for alternate accommodation and permissions obtained from the Society and the Municipal Corporation. These circumstances show, at least prima facie, that the Petitioner has acted on the basis of the Development Agreement and that the dispute arose after considerable steps had been taken towards redevelopment. This is an important factor while deciding whether the Petitioner should receive protection until the arbitration takes place.

10. The Petitioner relies upon Clause 85 of the Development Agreement. The relevant portion, as reproduced in paragraph 52

of the Petition, reads:

> "The Developer shall not stall the work of construction nor shall the Developer be called upon to stall the construction of the Proposed Building in any such Arbitral Proceedings for any dispute that arises in the circumstances and covenants as agreed herein between the parties."

11. The clause further states:

> "It is further clarified that the Developer may stall the construction of the Proposed Building upon receiving any claim pertaining to the title to the said Residential Property."

12. These terms are important for deciding the present dispute. It appears that the parties had expected that disputes might arise during redevelopment and had agreed that ordinary disputes arising under the Development Agreement should not, by themselves, stop the construction work. An exception was made where a claim relating to the title of the residential property is raised. The Petitioner relies on this clause to argue that the Respondents cannot stop the redevelopment merely because they are now asking for different benefits under the Agreement. From the material placed before me, the dispute about the size of the flats and additional benefits is not shown to be a dispute relating to title. Therefore, this clause supports the Petitioner's request that redevelopment should not be stopped merely because the parties have a dispute regarding their contractual rights.

13. The next question is whether the Respondents have, as alleged by the Petitioner, created obstruction to the

redevelopment. In paragraphs 32 to 35 of the Petition, the Petitioner refers to a communication dated 17 December 2025 addressed by the Respondents to the Society, asking the Society to withhold further permissions required for redevelopment. The Petitioner states that the Respondents had explained that this communication was issued because of the dispute between the Petitioner and Christine Marian Dias. They had assured the Petitioner that the communication would be withdrawn after that dispute was settled. The Petitioner further states that the dispute with Christine Dias was later resolved, but the communication was not withdrawn. According to paragraphs 44 to 46 of the Petition, the Society subsequently informed the Petitioner that the final NOC was being held up because of the communication dated 17 December 2025. The meeting held at the Society's office on 17 July 2026 did not resolve the matter. As described in the Petition, the minutes recorded that the parties would try to settle the disputes amicably, but the Respondents had not taken a final decision about withdrawing their communication. These allegations are important because the Petitioner is not seeking interim relief only because the Respondents have asked for larger flats. Its case is that the Respondents sent a communication to the Society which resulted in the final NOC required for the next stage of redevelopment being withheld. The Petitioner has relied upon the legal notice dated 16 July 2026, which, according to it, demands eight flats of about 1,000 square feet each and two garages or parking spaces for every flat. The Petitioner replied to that notice on 1 August 2026 and stated that the Respondents

were trying to renegotiate an Agreement which was binding on them. When these events are considered together, they provide prima facie support to the Petitioner's case that the dispute is not only about how the Agreement should be understood, but has affected the progress of redevelopment.

14. I am conscious that the allegations made by the Petitioner have not yet been finally decided. This order should not be understood to mean that every communication sent by the Respondents to the Society was unlawful. The Respondents cannot be prevented from raising a genuine issue concerning their legal rights. Similarly, the Society cannot be compelled to grant an approval which it is not legally required to grant. However, when a registered Development Agreement is in force and the parties have agreed to resolve their disputes through arbitration, one party cannot use correspondence with the Society merely to force the other party to accept fresh commercial terms. Therefore, interim protection must be granted in a limited manner so that the agreed redevelopment is not obstructed, while both sides remain free to place their claims before the arbitral tribunal.

15. The Respondents have argued that the reliefs sought by the Petitioner would amount to granting final relief at the interim stage. This objection needs careful consideration. Section 9 is intended to provide temporary protection to the rights in dispute and to prevent the arbitration or the final award from becoming ineffective. In *ArcelorMittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*, (2022) 1 SCC 712, the Supreme Court explained that interim relief is granted to support the final relief, so that the

arbitration does not become useless and the final award does not remain only a paper order. The Court explained that the usual considerations are whether the applicant has a prima facie case, whether the balance of convenience is in its favour and whether refusal of relief would cause irreparable injury.

16. The reliefs claimed in paragraph 69 of the Petition are not all of the same kind. Prayer clauses (a), (c) and (d) seek to prevent obstruction, creation of third-party rights and further correspondence which may stop the redevelopment. If these reliefs are properly limited, they are protective in nature. Their purpose is to ensure that the project is not frustrated before the disputes are decided in arbitration. Prayer clause (b), which asks the Court to direct the Respondents to cooperate, requires more care. A direction to cooperate cannot mean that the Respondents must accept every step which the Petitioner may propose, without any question. Such cooperation can be directed only in relation to the steps required under the Development Agreement and subject to the permissions required under law. The Respondents will still have the right to raise their contractual claims before the arbitral tribunal.

17. Prayer clause (e) is different from the other reliefs. It asks the Court to direct the Respondents to withdraw their communication dated 17 December 2025 so that the Society may issue the final NOC. A direction to withdraw an existing communication is a mandatory interim order because it requires the Respondents to take a positive step. Its effect is stronger than an ordinary order which only restrains a future act. Therefore, the

Court must be careful before granting such relief. In *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117, the Supreme Court held that an interim mandatory injunction ordinarily requires a stronger case than an ordinary prohibitory injunction. The Court must consider whether the applicant has a strong case for trial, whether the relief is necessary to prevent serious or irreparable injury, and whether the balance of convenience supports granting it. Applying these principles, the present case is not one in which the Petitioner is asking the Court to compel the Respondents to perform the entire Development Agreement at the interim stage or to finally decide what area of flats they are entitled to receive. The immediate grievance concerns the continued effect of the communication dated 17 December 2025, which, according to the Petitioner, is holding up the final NOC. The Petitioner states that the Respondents had earlier assured that this communication would be withdrawn after the dispute with Christine Dias was settled. That dispute was later resolved through consent terms dated 18 June 2026. However, according to the Petition, the communication continued to remain in place and affected the progress of the project. The registered Agreement and the events which followed provide a sufficient basis, for the limited purpose of interim protection, to prevent the communication from being used to stop redevelopment merely to obtain additional contractual benefits. Still, the direction must be limited to removing this particular obstacle and must not be treated as a final decision on any disputed contractual claim.

18. For these reasons, I am unable to accept the Respondents' argument that every relief sought by the Petitioner would necessarily amount to granting final relief. An order preventing obstruction, protecting the property and requiring the parties to act according to their existing Agreement does not, only because of that reason, finally decide the Petitioner's claim for specific performance. At the same time, the Court cannot grant relief in such wide terms that all the rights and obligations of the parties are decided before the arbitral tribunal considers them. The direction relating to the communication dated 17 December 2025 must be understood only as a temporary measure to prevent the redevelopment from being stopped because of the demands which are in dispute. Whether the Respondents are entitled to additional area, parking spaces or other benefits will remain open for decision in arbitration.

19. The balance of convenience must be considered. The Petition states that the Petitioner has settled the claims of several occupants, taken possession of certain flats, made payments towards alternate accommodation and obtained provisional permission from the Society and an Intimation of Disapproval from the Municipal Corporation. These steps affect not only the Petitioner and the Respondents, but the occupants and other persons whose arrangements are connected with the redevelopment. If the project remains stopped because of the communication in question, the delay may affect the commitments made by the Petitioner towards those persons. On the other hand, the Respondents can pursue their claim about the correct meaning

of the Development Agreement before the arbitral tribunal. Granting limited protection to the redevelopment will not take away their right to pursue that claim. On the material available, the balance of convenience is in favour of preventing obstruction which is not based on a title dispute or a lawful requirement.

20. The question of irreparable injury is connected with these circumstances. The Petitioner says that further delay would affect the construction schedule, the rights, and expectations of the occupants and the further permissions required for redevelopment. The money spent by the Petitioner is a relevant factor, although expenditure alone is not enough to establish irreparable injury. The more important point is that redevelopment involves several connected steps, including possession, alternate accommodation, approvals and construction of the new building. If the required permissions remain withheld for an indefinite period, the consequences may be more serious than a simple claim for money. Even if the Petitioner succeeds in arbitration, it may become difficult to bring the parties and other persons connected with the project back to the same position. I am satisfied that limited interim protection is necessary to ensure that the arbitration remains effective and meaningful.

21. I find that the prayer seeking to restrain the Respondents from creating third-party rights cannot be understood so widely that it prevents the redevelopment or stops the Petitioner from taking lawful steps under the Development Agreement. The Petitioner wants to prevent the Respondents from creating rights which may make it more difficult to deal with the land or the

subject-matter of the dispute during arbitration. Such protection is justified, but it must be limited to acts by the Respondents which are inconsistent with the Development Agreement or may affect the subject matter of the dispute. The order should not prevent the Petitioner from carrying out redevelopment according to the Agreement and the permissions granted by the competent authorities. At the same time, the rights of the Society, including its power to consider and grant permissions, cannot be taken away by an order passed in a Petition in which the Society is not shown as a Respondent.

22. Having considered all these circumstances, I find that the registered Development Agreement contains an arbitration clause and that the Petition discloses a genuine dispute regarding the performance of the Agreement. The Petition cannot be dismissed only because a notice under Section 21 was not issued before filing it. The material in the Petition gives a sufficient basis to conclude that the Petitioner intends to seek specific performance in arbitration, although the intention stated in paragraph 61 must now be acted upon within the period allowed by law. The Petitioner has made out a prima facie case for protection against obstruction to redevelopment. The balance of convenience supports granting limited protection, and refusal of such protection may cause harm which cannot be adequately compensated only by awarding damages in the future. The Respondents' objection that the reliefs are final in nature has some force to the extent that each relief must be carefully limited. However, this objection does not require the Court to refuse all interim protection.

23. For these reasons, I find that the Petition deserves to be allowed in part, subject to the safeguards stated below.

24. The interim order will not decide whether the Respondents are entitled to larger carpet areas, additional parking spaces or any other benefits beyond what is stated in the Development Agreement. These questions will remain open for arbitration. The Petitioner must now take clear and timely steps to commence arbitration. The interim protection will remain subject to Section 9(2) of the Act and any suitable order which may be passed by the arbitral tribunal under Section 17.

25. The Commercial Arbitration Petition is allowed in part in the following terms:

(i) Until the arbitral proceedings commence and continue, the Respondents are restrained from obstructing the redevelopment of the property under the registered Development Agreement dated 29 November 2024, except by pursuing remedies available to them in accordance with law;

(ii) The Respondents shall cooperate in taking the steps required from them under the Development Agreement, subject to the terms of the Agreement and the permissions required from the Society and the competent authorities;

(iii) The Respondents shall not create third-party rights in respect of the land or their leasehold rights in any manner which is inconsistent with the Development Agreement or may affect the subject matter of the arbitration. This

direction shall not prevent the Petitioner from carrying out redevelopment in accordance with the Agreement and the applicable permissions;

(iv) The Respondents are restrained from sending communications to the Society for the purpose of stopping the redevelopment or forcing the Petitioner to renegotiate the Development Agreement. However, this shall not prevent them from sending a genuine communication required to protect a lawful right or to raise an issue which the Society or a competent authority is required to consider;

(v) Within seven days from the date of this order, the Respondents shall withdraw their communication dated 17 December 2025, to the extent that it asks the Society to withhold further permissions merely because of the contractual disputes between the parties. Such withdrawal shall not prevent the Respondents from raising their claims in arbitration. No direction is issued to the Society to grant the final NOC, as the Society must take its decision according to its rules and the applicable law;

(vi) The Petitioner shall invoke the arbitration agreement by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996, within fourteen days from the date of this order. The Petitioner shall take the necessary steps to commence arbitration within the period provided under Section 9(2) of the Act;

(vii) The interim measures granted above shall remain in

force for ninety days from the date of this order, subject to the Petitioner commencing arbitration within that period. After the arbitral tribunal is constituted, either party will be free to seek suitable interim measures under Section 17 of the Act. The parties may seek further appropriate directions regarding continuation of protection until the tribunal considers such an application;

26. All the observations made in this order are only prima facie observations for deciding the present Petition. The arbitral tribunal shall decide the disputes independently, on the basis of the evidence and submissions placed before it, without being influenced by these observations.

27. The Arbitration Petition stands disposed off in above terms. There shall be no order as to costs.

28. At the time of pronouncement of Judgment, it is informed that after the matter was fixed for judgment, the Respondents terminated Petitioner's agreement. Therefore, it shall be open for the Petitioner to take out appropriate proceedings for appropriate reliefs.

(AMIT BORKAR, J.)