Sayali

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

ARBITRATION APPLICATION (L) NO. 26917 OF 2023

SAYALI DEEPAK UPASANI

Digitally signed by SAYALI DEEPAK UPASANI
Date: 2026.10.23 12:30:20 +0530

Kundanmal Kothari Since Deced through His legal heirs Kanchanben Kundanmal Kothari ... Applicant

Vs.

Goregaon Jai Bhuvan Co-operative Housing Society Ltd and Others ... Respondents

Mr.Anand Mohan with Ms. Priyanka Prabhakar i/b ANM Global, for Petitioner.

Mr. Piyush Shah with Mr. Dishang Shah, & Mr. Deep Madnani, for Respondent Nos. 2 to 4.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 21, 2026.

PRONOUNCED ON : OCTOBER 23, 2026

JUDGMENT:

1. The present Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996. By this Application, the Applicant seeks appointment of an independent Arbitrator to decide the disputes between the parties. The Applicant requests that the seat of arbitration be Mumbai and that the costs of arbitration be shared equally by the parties. The request is based on Clause 46 of the Agreement for Permanent Alternate

Accommodation dated 21 June 2014, read with paragraphs 61 and 63 of the Supplementary Agreement dated 28 December 2015.

2. The Applicant is a member of Respondent No. 1 Society and holds five shares bearing distinctive Nos. 81 to 85 under Share Certificate No. 17 issued by the Society in respect of Flat No. 17. Following the redevelopment of the Society's property, the Applicant claims entitlement to new Flat No. 803, having a carpet area of 531 square feet, equivalent to 49.33 square metres, on the 8th and 9th Floors of the proposed new building. The Applicant claims an open terrace admeasuring 318 square feet, equivalent to 29.54 square metres. The new building is proposed to be constructed on Plot Nos. 28 and 29, Survey No. 74, Hissa No. 2, bearing City Survey Nos. 236 and 236/1 to 10, at Village Pahadi Goregaon (East), Taluka Borivali, Mumbai Suburban District. According to the Applicant, these premises, including the terrace, were allotted to him on an ownership basis under the Agreement for Permanent Alternate Accommodation. On 25 March 2014, Respondent No. 1 Society and its members agreed to undertake redevelopment of the property and entered into a Development Agreement with Prakrit Developers Pvt. Ltd. Thereafter, on 21 June 2014, Prakrit Developers Pvt. Ltd. and the Applicant executed and registered an Agreement for Permanent Alternate Accommodation. A Deed of Rectification was registered on 14 August 2014. Subsequently, on 28 December 2015, Respondent Nos. 2 to 4 came into the picture as the developers under the Supplementary Agreement. According to the Applicant, paragraph 61 of the Supplementary Agreement required Respondent Nos. 2

to 4 to continue paying monthly rent to the Society members, with an increase of 10% from May 2016 until possession of the new premises was handed over. The Applicant alleges that Respondent Nos. 2 to 4 failed to comply with this obligation.

3. According to the Applicant, as on 31 May 2023, Respondent Nos. 2 to 4 were liable to pay Rs. 25,98,166/-. Out of this amount, they paid Rs. 12,06,308/-, leaving a balance of Rs. 13,91,858/- payable to the Applicant, apart from interest and further amounts accruing from 1 June 2023. The Applicant further states that, as on 1 August 2023, an amount of Rs. 73,05,937/-, comprising rent, double rent and interest, was due and payable by Respondent Nos. 2 to 4. On 26 June 2023, the Applicant invoked the arbitration clause in respect of the alleged non-payment of rent and the dispute concerning the terrace area. The Applicant proposed the names of two Arbitrators. However, no reply was received to the notice. The Applicant has approached this Court seeking appointment of a Sole Arbitrator to resolve the disputes between the parties.

4. Mr. Anand Mohan, learned Advocate appearing for the Applicant, relied upon Clause 46 of the registered Agreement for Permanent Alternate Accommodation dated 21 June 2014, hereinafter referred to as the "PAAA", which was originally executed between the Applicant and Prakrit Developers Pvt. Ltd., the original developer. The principal objection raised by Respondent Nos. 2 to 4 is that they did not sign the PAAA. According to the Applicant, however, there is no dispute about the existence of an arbitration clause in the PAAA or in the

Development Agreement. Mr. Mohan submitted that Respondent Nos. 2 to 4 are bound by the arbitration agreement for three independent reasons. First, Respondent No. 2 claims through and/or under the original developer. Second, the arbitration agreement in the Development Agreement stands incorporated by reference into the Supplementary Development Agreement, hereinafter referred to as the "SDA", which Respondent No. 2 signed. Third, Respondent Nos. 2 to 4 are, in substance, parties to the arbitration agreement. He further submitted that none of the objections raised by the respondents provides a valid reason to refuse the appointment of an Arbitrator.

5. Mr. Mohan submitted that Respondent No. 2 is the successor and transferee of the original developer and claims through and/or under it. He relied upon the provisions of the SDA, under which the redevelopment rights "shall stand assigned and transferred to, unto and in favour of the said Developers herein". The SDA further provides that Prakrit "shall cease to hold any re-development rights or any other rights", and that Respondent No. 2 "shall be placed in the shoes of the said Confirming Party herein (Previous Developers)" and shall be "answerable and held accountable only vis-à-vis Permanent Alternative Accommodation Agreement/s". According to the Applicant, these terms show that Respondent No. 2 took the place of the original developer and received the benefits under the SDA read with the PAAA, including the redevelopment rights and possession of the Society's property. Having accepted these benefits, Respondent No. 2 cannot now refuse to comply with the arbitration agreement connected with those rights and

obligations. Mr. Mohan relied upon the principle that a successor to a signatory is bound by both the benefits and the obligations of the arbitration clause when the successor steps into the position of the original party. In support of this submission, he relied upon paragraph 135 of the judgment in *Cox and Kings Ltd. v. SAP India (P) Ltd.,* (2024) 4 SCC 1. He submitted that the same provisions support his argument that the arbitration clause was incorporated by reference into the SDA.

6. Mr. Mohan next relied upon the decision of the Supreme Court in *Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd.,* 2026 SCC OnLine SC 854. He submitted that the Supreme Court, in that case, reversed the decision of this Court reported in 2025 SCC OnLine Bom 6499, where a similar redevelopment arrangement was involved. In that arrangement, the Development Agreement contained an arbitration clause, while the subsequent Agreements for Permanent Alternate Accommodation executed with individual members referred to the Development Agreement. The Supreme Court considered the principles laid down in *M.R. Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd.,* (2009) 7 SCC 696, paragraph 9, and applied the decision in *NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.,* (2024) 7 SCC 174, paragraph 10. According to Mr. Mohan, these decisions support the Applicant's case that the arbitration clause in the Development Agreement became part of the arrangement with the Applicant.

7. On the basis of these decisions, Mr. Mohan submitted that an arbitration clause contained in one document may become part of another contract when certain conditions are satisfied. The

contract must refer to the other document, and the reference must show a clear intention to incorporate its terms. The arbitration clause must be capable of applying to the disputes arising under the contract and must not conflict with any of its provisions. According to the Applicant, all these conditions are satisfied in the present case. He submitted that the arbitration clause became part of the arrangement through three separate routes, each of which independently supports the request for appointment of an Arbitrator.

8. The first route relied upon by Mr. Mohan is that the arbitration clause in the Development Agreement became part of the PAAA executed with the Applicant. He submitted that the facts are similar to those considered by the Supreme Court in *Hirani Developers*. In paragraph 5 of that decision, the relevant clause stated: "It is clarified that all the terms and conditions of the development agreement dated 4 July 2012 shall be construed to form a part of these presents and all the clauses of the same shall be binding on the parties hereto." Mr. Mohan then referred to Clause 1 of the PAAA in the present case, which states: "It is declared, confirmed between all the parties that the Development Agreement executed between the Developer, and Society being party of the first part and third part is registered under No. 07189-2012 with the Sub-Registrar of Mumbai Suburban Registration District are valid and subsisting and binding upon all the parties and that all the recitals and terms and conditions as specified in the Development Agreement shall form an integral part of this agreement as if they are inspected herein." According to the

Applicant, the member, the Developer, and Respondent No. 1 Society signed the PAAA. Clause 1 makes the Development Agreement an integral part of the PAAA. Therefore, Mr. Mohan submitted that Clause 28.1 of the Development Agreement, which contains the arbitration clause, forms part of the PAAA, in addition to Clause 46.

9. The second and third routes relied upon by Mr. Mohan arise from the provisions of the SDA signed by Respondent No. 2. According to him, the SDA adopts the Development Agreement and incorporates the PAAA into the arrangement. It provides that the expression "the Developers" includes Respondent No. 2's "present or future partners". In particular, the SDA provides that Respondent No. 2 "shall stand substituted as the Developers under the said Registered Agreement for Re-development dated 27-08-2012 and the Developers herein shall hereafter comply with the obligations as recorded therein". It further provides that Respondent No. 2 "shall stand substituted as the Developers in the Agreement/s for Permanent Alternate Accommodation executed and Registered with the respective Flat and Shop Owners/Members of the said Society". The SDA states that the recitals and operative provisions of the Development Agreement "shall stand modified and duly confirmed and adopted", and that Respondent No. 2 stands "Substituted as the Developers in place and stead of the said Developers". Further, Respondent No. 2 is required to "strictly abide by all the commercial terms" of the PAAA, while the "carpet area, location, position and amenities" are to be as provided in the PAAA. Finally, the SDA states that the

"fundamental clauses and terms" of the PAAAs "executed with the Existing Members" "shall be an integral part of this Supplementary Development Agreement".

10. Mr. Mohan submitted that the requirements explained in *Hirani Developers* are satisfied by these provisions. First, the reference to the other agreements is specific because the SDA identifies the Development Agreement by its date and registration number and refers to the PAAAs executed and registered with the Society members. Second, the expressions "Integral part", "stand substituted", "placed in the shoes" and "strictly abide" show an intention to adopt the terms of the earlier agreements. He submitted that these expressions are consistent with the principles discussed in paragraph 17 of M.R. Engineers and approved in paragraph 11 of Hirani Developers. Third, the present disputes concerning carpet area, terrace and transit rent for Flat No. 803 are, according to the Applicant, matters connected with the PAAA and are covered by Clause (t) and Clause 57. Fourth, the SDA does not exclude arbitration. Mr. Mohan further submitted that Clause 69 of the SDA does not apply to the Applicant's claims, for the reasons stated in paragraph 18 below.

11. Mr. Mohan relied upon the principle that connected agreements forming part of one transaction should be read together for deciding disputes arising from that transaction. In support, he referred to *National Skill Development Corporation v. Surya Wires (P) Ltd.,* 2026 SCC OnLine SC 1798; 2026 INSC 977. According to his submission, the Supreme Court held in paragraph 26 that agreements which operate together as parts of one

composite transaction cannot be separated from one another for the purpose of resolving disputes.

12. Applying that principle to the present case, Mr. Mohan submitted that the Development Agreement, the PAAA and the SDA form parts of one redevelopment arrangement concerning the same property and the same Society members. The PAAA makes the Development Agreement an integral part of itself, while the SDA adopts the Development Agreement and makes the PAAAs an integral part of the supplementary arrangement. According to the Applicant, Respondent No. 2 accepted the obligations concerning rent, carpet area and location under the PAAA. It cannot rely upon the PAAA for those obligations while denying the arbitration mechanism connected with the same arrangement. In support of his argument that Respondent Nos. 2 to 4 are, in substance, parties to the arbitration agreement, Mr. Mohan relied upon the Constitution Bench decision in *Cox and Kings Ltd.*. He referred to *Hemant D. Shah HUF v. Chittaranjan D. Shah HUF,* 2026 SCC OnLine SC 2125; 2026 INSC 1111.

13. Mr. Mohan further relied upon the decision of this Court in *The Zoroastrian Radih Society v. Behramshah Shroff Building No. 3 (Damavand) CHS Ltd.,* Arbitration Application No. 427 of 2026, decided on 1 October 2026. He submitted that, after execution of the PAAA, the SDA was entered into and Respondent No. 2 took the place of the original developer. According to him, the obligations for which the Applicant seeks relief arise under the PAAA, and Respondent No. 2 is the entity which subsequently undertook to perform those obligations.

14. Mr. Mohan then addressed the objections raised by Respondent Nos. 2 to 4. These objections are that they are not parties to the PAAA, that the Applicant's complaint before MahaRERA prevents him from filing the present application, that the Applicant is not entitled to the terrace, and that transit rent was paid until August 2022. According to Mr. Mohan, none of these objections justifies refusing the appointment of an Arbitrator. He submitted that the objection regarding the absence of a direct signature on the PAAA is answered by the provisions and decisions discussed above. As regards the MahaRERA complaint, he stated that the proceedings were disclosed in the application and that the notice invoking arbitration was issued without prejudice to those proceedings. According to him, no forum has decided the disputes raised in the present application, and the reliefs sought are not the same. He relied upon paragraphs 10 to 14 of The Zoroastrian Radih Society to submit that the mere pendency of statutory proceedings does not prevent a reference to arbitration. As regards the terrace and rent disputes, he submitted that these are matters concerning the merits of the claims and should be decided by the Arbitral Tribunal. He pointed out that Respondent Nos. 2 to 4 admit that the approved plans do not include the terrace and that Respondent No. 2 “regularly paid the monthly compensation/rent to the Applicant” until 23 August 2022. According to the Applicant, the latter admission shows that Respondent No. 2 had acted upon the obligation to pay rent under the PAAA. Mr. Mohan submitted that these disputed issues should be left for consideration by the Arbitral Tribunal, as recognised in The

Zoroastrian Radih Society.

15. Respondent Nos. 2 to 4 contend that the SDA does not contain an arbitration clause and instead confers jurisdiction upon the Courts at Mumbai under Clause 69. The clause reads as follows:

> "In case of any dispute or differences which may arise between the parties hereto with regard to the right and obligation of parties herein and/or the interpretation of any of the clauses herein contained then the Court/s in Mumbai alone shall have jurisdiction to entertain and try such disputes."

16. In reply, Mr. Mohan submitted that Clause 69 is confined to disputes "between the parties hereto", namely Respondent No. 1 Society, Prakrit and Respondent No. 2. The Applicant is not a party to the SDA. His claims arise under the PAAA, which contains Clause 46 providing for arbitration. According to the Applicant, Clause 69 does not govern the disputes raised by him. Mr. Mohan further submitted that Respondent Nos. 2 to 4 rely upon the SDA to contend that Respondent No. 2 became the new developer and assumed the obligations of the original developer. The same SDA substitutes Respondent No. 2 in the PAAA and makes the PAAA an integral part of the arrangement. According to the Applicant, the respondents cannot rely upon the SDA to accept its obligations while refusing to apply its terms for resolving disputes. In this connection, he relied upon paragraph 28 of *National Skill Development Corporation,* referred to above. He submitted that a clause conferring jurisdiction upon the Courts at Mumbai does not exclude arbitration seat at Mumbai. This Court would exercise

jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, and supervisory jurisdiction over the arbitration. Therefore, according to the Applicant, there is no conflict between Clause 69 and the arbitration clause relied upon by him.

17. Mr. Mohan relied upon certain statements made by Respondent Nos. 2 to 4 in support of the Applicant's case. He pointed out that the respondents themselves rely upon the Development Agreement, which contains the arbitration clause, and describe it as “the principal document, by virtue of which, the Respondent No. 1 Society went into re-development”. They contend that the Applicant is bound by the terms of that agreement. According to the Applicant, the respondents cannot deny the relevance of the same arrangement when the question arises as to the applicability of its arbitration clause. Mr. Mohan further pointed out that Respondent Nos. 2 to 4 admit that Respondent No. 2 regularly paid transit rent to the Applicant until 23 August 2022 and remains ready to pay it.

18. Mr. Piyush Shah, learned Advocate appearing for Respondent Nos. 2 to 4, opposed the application. He submitted that the PAAA dated 21 June 2014, produced as Exhibit A to the application, was executed between the Applicant and the erstwhile developer, Prakrit Developers. Respondent Nos. 2 to 4 were not parties to that agreement and were not privy to it. On this basis, he contended that the arbitration clause contained in Clause 46 of the PAAA cannot be enforced against them. Mr. Shah further submitted that the Applicant had filed Complaint No. CC006000000303322 against Respondent Nos. 2 to 4 before the MahaRERA Authority.

According to him, the Applicant is now barred by law from filing the present application because, as alleged, he is seeking the same reliefs that were sought in the MahaRERA complaint. He stated that the respondents seek permission to refer to and rely upon the papers and proceedings in the MahaRERA complaint at the time of hearing of the present application.

19. Mr. Shah, without prejudice to the other objections raised by the respondents, denied the statements made in paragraph 4.1 of the application and called upon the Applicant to prove all those statements which had not been admitted. He alleged that the Applicant had deliberately failed to produce an important document, namely the registered Agreement for Redevelopment dated 27 August 2012, registered on 28 August 2012 under Serial No. BDR-11-07189-2012. That agreement was executed between Respondent No. 1 Society and the erstwhile developers, Prakrit Developers, and, according to the respondents, was the principal document under which the Society's property was taken up for redevelopment. Mr. Shah relied upon Clause 7, titled “Area Benefits”, and Clause 7.1, appearing at internal page 19 of the said Agreement for Redevelopment. According to him, these clauses provide that the existing members of the Society, including the Applicant, would receive new premises having the same carpet area as the area they occupied earlier. On this basis, he contended that the Applicant is not entitled to claim an additional terrace area of 318 square feet or any separate car parking space. He described the Applicant's claims in this regard as incorrect. Clause 7.1 of the Agreement for Redevelopment reads as follows:

> "7.1 The developers under the terms of this agreement have agreed to grant to the presently existing member/s new flat/commercial units in the proposed building/s to be constructed on the said plot which shall have the presently existing carpet area occupied by the member as per joint measurement plan including dry balcony, flower bed, niches as per the approval of the MCGM. The said New flat/commercial unit shall be made available to each of the presently existing member/s free of cost and shall have the benefit of areas as mentioned aforesaid (hereinafter referred to as the said 'PERMANENT ALTERNATE ACCOMMODATION') in accordance with the details of the areas mentioned in the List of members furnished by the society as per its present records and duly verified by the Developers. The permanent alternate accommodation to be granted hereunder shall have constructed carpet area (internal wall to wall), viz., the presently existing carpet area of the flat/s/commercial units agreed to be granted hereunder including dry balcony, flower bed, niches. The commercial units shall have 14 ft height from unfinished floor to slab on current existing area as per the approval from the MCGM, the details thereof are mentioned in the copy of the area statement annexed hereto (a copy of the area statement is annexed hereto and marked as Annexure 'VII')."

20. Mr. Shah stated that a copy of the registered Agreement for Redevelopment dated 27 August 2012, registered under Serial No. BDR-11-07189-2012 on 28 August 2012 and executed between Respondent No. 1 Society and Prakrit Developers, was annexed to the respondents' reply and marked as Exhibit A.

21. Mr. Shah further submitted that the registered SDA dated 28 December 2015, executed between Respondent No. 1 Society and

Respondent No. 2 as the new developer and produced as Exhibit C to the application, contains no arbitration clause. He relied upon Clause 69 of the SDA, appearing at internal page 81, which provides as follows:

> "69. In case of any dispute or differences which may arise between the parties hereto with regard to the right and obligation of parties herein and/or the interpretation of any of the clauses herein contained then the Court/s in Mumbai alone shall have jurisdiction to entertain and try such dispute/s."

22. According to Mr. Shah, since the SDA contains no arbitration clause and instead provides for the jurisdiction of the Courts at Mumbai, the Applicant cannot invoke arbitration against Respondent Nos. 2 to 4 on the basis of Clause 46 of the PAAA. He submitted that the Applicant's remedy, if any, is to approach the Civil Court. On this ground, he contended that the present application is not maintainable and deserves to be dismissed with costs.

REASONS AND FINDINGS

Whether the arbitration agreement applies to the substituted developer:

23. The first question concerns the relationship between the Applicant, the original developer and Respondent Nos. 2 to 4. It is not disputed that Respondent Nos. 2 to 4 did not sign the original PAAA. A person cannot be made responsible under an arbitration agreement only because another person signed it or because both persons are connected with the same business. However, the

absence of a signature does not always conclude the matter. The position may be different if the person later enters into an agreement accepting the earlier arrangement or is substituted in place of the original party. In this connection, the provisions of the SDA are important. The Applicant relies upon the provision stating that the redevelopment rights "shall stand assigned and transferred to, unto and in favour of the said Developers herein". The SDA states that Prakrit "shall cease to hold any re-development rights or any other rights". It further provides that Respondent No. 2 "shall be placed in the shoes of the said Confirming Party herein (Previous Developers)" and shall be "answerable and held accountable only vis-à-vis Permanent Alternative Accommodation Agreement/s". These words show that the intention was to put Respondent No. 2 in the place of the earlier developer and give it the obligations connected with the redevelopment agreements. The SDA further states that Respondent No. 2 "shall stand substituted as the Developers under the said Registered Agreement for Re-development dated 27-08-2012 and the Developers herein shall hereafter comply with the obligations as recorded therein". It states that Respondent No. 2 "shall stand substituted as the Developers in the Agreement/s for Permanent Alternate Accommodation executed and Registered with the respective Flat and Shop Owners/Members of the said Society". The words used in the SDA have to be given their proper meaning. Respondent No. 2 was not permitted to do some redevelopment work while the original developer kept all its rights and obligations. The agreement says that Respondent No. 2 would

replace the earlier developer under the redevelopment agreement and the individual PAAAs. The new developer was required to carry out the obligations mentioned in those agreements. In these circumstances, Respondent No. 2 cannot take the benefits of the redevelopment arrangement and at the same time say that the related obligations belong only to the original developer. This does not mean that every person connected with Respondent No. 2 becomes responsible under the PAAA. The position of each person must be considered by looking at the agreements and that person's conduct. But, in the case of Respondent No. 2, the clear provisions of the SDA give a sufficient basis to hold that it cannot avoid the arbitration clause only because it did not sign the original PAAA.

24. The Applicant has relied upon the principle that a person who claims through or under an earlier contracting party cannot take the benefits of an agreement and refuse to accept the obligations which are part of the same agreement. The decision in *Cox & Kings Ltd.*, is relevant for understanding the position of persons who have not signed an arbitration agreement. However, the present conclusion is not based on a general view that all persons or companies connected with the same redevelopment project must be treated as one. It rests on the clear provisions of the SDA and the fact that the new developer was substituted under the existing arrangement. In *Cox & Kings Ltd.*, paragraph 127, the Supreme Court explained the test to be applied under the Group of Companies doctrine. The Court held that the fact that companies belong to the same group is not enough to bind a non-signatory to an arbitration agreement. The Court or Tribunal must examine

how that person was involved in the contract. The involvement must show that the person actively accepted obligations or agreed to perform the contract. The Supreme Court further stated that the involvement must be positive, direct and substantial in the negotiation, performance or termination of the contract. Merely being involved in some small or incidental way is not enough. The party who wants to bind a non-signatory must show through objective evidence that the person was consciously and deliberately involved.

25. In the present case, the Applicant's claim against Respondent No. 2 is not based only on a relationship between different companies or persons. Respondent No. 2 signed the SDA, and that agreement provides for its substitution under the earlier redevelopment arrangement and the individual PAAAs. The Applicant is relying on an actual undertaking given by Respondent No. 2 and not merely on its connection with the original developer.

26. In *National Skill Development Corporation*, paragraphs 25 to 28, the Supreme Court considered agreements which were connected with each other. The Court held that their terms must be read together to find out whether the parties intended them to work as one arrangement. Importance was given to the fact that the documents referred to and incorporated each other and were intended to form parts of one commercial transaction. In paragraph 26, the Court held that the documents were intended to operate as “component parts of one composite transaction governing a single commercial arrangement”.

27. The principle from this decision is that where parties have connected different documents and made them parts of one arrangement, one document cannot be taken only to avoid the method for deciding disputes which forms part of that arrangement. This does not mean that all connected documents will always become one agreement. The intention of the parties must be understood from the actual words used in those documents. Here, the SDA adopts the earlier redevelopment agreement and the individual PAAAs. It requires the new developer to perform the obligations stated in them. Thus, the connection between these documents is shown by the terms of the agreements.

Whether the arbitration clause became part of the later agreement:

28. The question of incorporating an arbitration clause by referring to another document was considered by the Supreme Court in *Hirani Developers*. In that case, the Development Agreement contained an arbitration clause and the later Agreements for Permanent Alternate Accommodation referred to that earlier Development Agreement. Clause 14 of those agreements provided:

> "It is clarified that all the terms and conditions of the development agreement dated July 4, 2012 shall be construed to form a part of these presents and all the clauses of the same shall be binding on the parties hereto."

29. The Supreme Court considered Section 7(5) of the Arbitration and Conciliation Act, 1996, which deals with making

an arbitration clause in another document part of a contract. The Court explained that mentioning another document is different from saying that the document will become part of the contract. In *M.R. Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd.,* (2009) 7 SCC 696, paragraph 17, the Supreme Court held that if a contract says that another document shall form part of it, or that all the terms and conditions of that document will be treated as part of the contract, those terms become part of the later contract unless they go against a specific provision in it. Therefore, if the earlier document contains an arbitration clause, that clause becomes applicable.

30. Applying this principle, the Supreme Court held in paragraphs 11 and 12 of *Hirani Developers* that Clause 14 showed that the parties intended to make the earlier Development Agreement part of the later PAAAs. The reference was not made only for some limited purpose. The parties had agreed that all the terms and conditions of the Development Agreement would form part of the later agreements and that all its clauses would bind them. Therefore, the arbitration clause in the earlier Development Agreement became part of the later agreements. The provisions of the agreements in the present case must be examined in the light of this principle. The Applicant relies upon Clause 1 of the PAAA, which reads as follows:

> "It is declared, confirmed between all the parties that the Development Agreement executed between the Developer, and Society being party of the first part and third part is registered under No. 07189-2012 with the Sub-Registrar of Mumbai Suburban Registration District are valid and

> subsisting and binding upon all the parties and that all the recitals and terms and conditions as specified in the Development Agreement shall form an integral part of this agreement as if they are inspected herein."

31. The words in Clause 1 are important. The PAAA does not refer to the Development Agreement only to identify the property or decide some particular measurement. It states that the recitals and the terms and conditions of the Development Agreement shall form an integral part of the PAAA. Further, Clause 46 of the PAAA itself provides for arbitration. Therefore, the Applicant is not relying only on an arbitration clause taken from the Development Agreement. The PAAA executed with the Applicant has its own arbitration clause.

32. The SDA later provides that the new developer will be substituted under the individual PAAAs and will have to perform the obligations contained in those agreements. It states that Respondent No. 2 "shall strictly abide by all the commercial terms" of the PAAA. The "carpet area, location, position and amenities" are to be as provided in the PAAA. The SDA further states that the "fundamental clauses and terms" of the PAAAs "executed with the Existing Members" "shall be an integral part of this Supplementary Development Agreement".

33. When these provisions are read together, it shows that the intention was to continue the earlier arrangement. The SDA does not mention the PAAAs only to take some limited information from them. It provides for substitution of the new developer under those agreements, requires the new developer to carry out the

obligations in them and makes their fundamental clauses and terms an integral part of the SDA. In these circumstances, the arbitration clause in the PAAA cannot be separated from the other obligations when the new developer has agreed to perform the obligations stated in that agreement.

34. The decision in *National Skill Development Corporation* supports reading connected documents together. The exact words in the agreements considered by the Supreme Court in that case were different from the words used in the present SDA. Even so, the principle is that where the parties connect different documents as parts of one arrangement, the Court must look at the whole arrangement and give effect to the intention shown by the terms of those documents.

35. Respondent No. 2 cannot say that the SDA makes it responsible for the commercial obligations under the PAAA but does not make it responsible for the arbitration clause in that same agreement. The obligation to pay transit rent, the obligation to provide the agreed premises and the method for deciding disputes all arise from the same arrangement. No separate provision has been shown which excludes the arbitration clause from the obligations accepted by the substituted developer.

36. This conclusion is supported by *NBCC (India) Ltd*. The Supreme Court held that an arbitration clause in another document may become part of a later contract where the later contract refers to the document containing the arbitration clause, shows that the parties intended to include that clause and has no

inconsistent provision. A general reference to another document is not enough. In the present case, the SDA identifies the earlier redevelopment agreement, refers to the registered PAAAs and substitutes the new developer under those agreements. The intention to accept the relevant obligations is shown by the terms of the documents.

Effect of the objection that Respondent Nos. 2 to 4 did not sign the PAAA:

37. The objection that Respondent Nos. 2 to 4 did not sign the original PAAA cannot bring the present application to an end. The real question is whether they accepted the obligations in the PAAA, including its arbitration clause, by entering into or acting under the later arrangement. In the case of Respondent No. 2, the terms of the SDA provide a sufficient basis to answer this question in the affirmative. In Cox & Kings Ltd, paragraph 170.12, the Supreme Court held that, when a dispute is being referred to arbitration, the Court should leave it to the Arbitral Tribunal to decide whether a non-signatory is bound by the arbitration agreement. This principle matters because the final responsibility of each respondent, and the reason for treating that respondent as bound, may depend on the terms of the agreements and the evidence showing that person's involvement. However, the position of Respondent No. 2 is different from that of Respondent Nos. 3 and 4. The material before this Court shows that Respondent No. 2 signed the SDA and was substituted as the developer. The Applicant relies on the provision referring to the present or future partners of the developers. But the material before this Court does

not show the exact capacity in which Respondent Nos. 3 and 4 accepted individual obligations under the SDA. Their liability cannot be decided only because they are connected with Respondent No. 2 or are described as part of the group of developers.

38. The requirement explained in paragraph 127 of *Cox & Kings Ltd* must be applied to each non-signatory whose involvement is disputed. The Arbitral Tribunal will have to examine the relevant agreements and objective evidence to find out whether Respondent Nos. 3 and 4 directly and consciously accepted obligations under the redevelopment arrangement or otherwise became bound by the arbitration agreement. Their connection with Respondent No. 2, will not be enough. But this question does not require the whole application to be rejected at the beginning. There is a prima facie basis for sending the disputes against Respondent No. 2 to arbitration. The position of Respondent Nos. 3 and 4 can be examined by the Arbitral Tribunal in accordance with law.

39. In *The Zoroastrian Radih Society*, this Court considered whether a person could be treated as a stranger to an arbitration arrangement only because that person had not signed the original agreement. In that case, this Court relied upon the judgment in *Shri Shivranjan Towers Sahakari Griha Rachana Sanstha Maryadit v. Bhujbal Constructions and Others,* 2025 SCC OnLine Bom 3097 and referred to the following observation in paragraph 20 thereof:

> "Undoubtedly, the Petitioner-society is not a signatory to the said Agreement for Sale and it could not have been a

> signatory as it was yet to be formed. Therefore, the issue cannot be determined only on the premise that the Petitioner-society is not a signatory to those Agreement for Sale which contains the Arbitration Clause."

40. This observation does not mean that every person who has not signed an arbitration agreement must be bound by it. It means that the absence of a signature cannot be the only thing considered while deciding the issue. The Court must look at the actual relationship between the parties and find out where their rights and obligations come from. In *The Zoroastrian Radih Society*, this Court referred to Daman Singh v. State of Punjab, which dealt with the relationship between a cooperative society and its members. In that case, the Society had not been formed when the individual Agreements for Sale were made. The present case is about a new developer which later entered into a supplementary agreement and was substituted under the existing redevelopment agreements. Though the facts are not the same, the need to examine the actual relationship remains.

41. The Applicant has shown that the objection that the respondents did not sign the PAAA cannot defeat the arbitration application. Respondent No. 2 accepted obligations under the SDA relating to the PAAA. As regards Respondent Nos. 3 and 4, their position will have to be decided by the Arbitral Tribunal after looking at the agreements and the evidence. It is not necessary to give a final finding on their individual liability while deciding the present application.

Effect of Clause 69 of the SDA:

42. The respondents have further argued that the SDA does not contain an arbitration clause and that Clause 69 gives jurisdiction to the Courts at Mumbai. Clause 69 reads as follows:

> "In case of any dispute or differences which may arise between the parties hereto with regard to the right and obligation of parties herein and/or the interpretation of any of the clauses herein contained then the Court/s in Mumbai alone shall have jurisdiction to entertain and try such disputes."

43. This objection has to be considered by looking at the actual words of Clause 69. It refers to disputes "between the parties hereto" about their rights and obligations under the SDA or the meaning of its clauses. The Applicant has not signed the SDA. His claim arises under the PAAA, which contains Clause 46 providing for arbitration. The SDA substitutes the new developer under the PAAA and requires it to perform the obligations stated in that agreement. Therefore, the Applicant's claims cannot be treated as governed only by Clause 69 merely because that clause appears in the SDA. Clause 69 says that the Courts at Mumbai will have jurisdiction to hear and decide the disputes mentioned in it. But it does not say that an arbitration clause taken from another document will stop operating or that disputes cannot be referred to arbitration. This clause has to be read along with the other provisions by which the PAAA and the earlier redevelopment agreement were adopted. Both provisions can work together without treating the arbitration clause as having ended.

44. The fact that the SDA does not contain an arbitration clause does not decide the issue . Section 7(5) of the Arbitration and Conciliation Act, 1996 allows an arbitration clause to be incorporated by reference. The decisions in *M.R. Engineers, NBCC* and *Hirani Developers* require the Court to examine whether the reference is clear and whether the parties intended to make the arbitration clause part of the later arrangement. For the reasons stated, the relevant provisions of the SDA satisfy this requirement, at least in relation to Respondent No. 2.

45. The respondents' argument that the Applicant must approach the Civil Court instead of invoking arbitration cannot be accepted. Clause 69 does not defeat the arbitration clause in the PAAA, which has been adopted as part of the later arrangement. This finding is limited to the Applicant's claims arising under the PAAA and the obligations accepted by the substituted developer. It does not mean that every dispute arising under the SDA, whatever the parties or the relevant terms may be, must go to arbitration.

Whether the dispute about the terrace prevents reference to arbitration:

46. The respondents say that the Applicant is not entitled to the terrace area of 318 square feet. They rely on Clause 7.1 of the registered Agreement for Redevelopment dated 27 August 2012. That clause reads as follows:

> "7.1 The developers under the terms of this agreement have agreed to grant to the presently existing member/s new flat/commercial units in the proposed building/s to be constructed on the said plot which shall have the presently

existing carpet area occupied by the member as per joint measurement plan including dry balcony, flower bed, niches as per the approval of the MCGM. The said New flat/commercial unit shall be made available to each of the presently existing member/s free of cost and shall have the benefit of areas as mentioned aforesaid (hereinafter referred to as the said 'PERMANENT ALTERNATE ACCOMMODATION') in accordance with the details of the areas mentioned in the List of members furnished by the society as per its present records and duly verified by the Developers. The permanent alternate accommodation to be granted hereunder shall have constructed carpet area (internal wall to wall), viz., the presently existing carpet area of the flat/s/commercial units agreed to be granted hereunder including dry balcony, flower bed, niches. The commercial units shall have 14 ft height from unfinished floor to slab on current existing area as per the approval from the MCGM, the details thereof are mentioned in the copy of the area statement annexed hereto (a copy of the area statement is annexed hereto and marked as Annexure 'VII')."

47. According to the respondents, this clause limits each member's entitlement to the carpet area which the member occupied earlier, together with the areas mentioned in the clause. They further say that the original Agreement for Redevelopment did not promise a terrace and that the approved plans do not show the terrace claimed by the Applicant. On this basis, they dispute his claim for an additional 318 square feet. The Applicant, on the other hand, relies on the specific terms of his registered PAAA. According to him, Flat No. 803 was allotted to him along with an open terrace measuring 318 square feet. He says that the dispute about the terrace has come directly from the arrangement and

should be decided by the Arbitral Tribunal.

48. At this stage, it is not necessary to decide which side is correct. The Agreement for Redevelopment contains provisions about the area to be given to existing members. The Applicant relies on his individual PAAA and says that it gives him a terrace in addition to the carpet area. The parties disagree about how these provisions should be understood. The relevant documents will have to be read together, the allotment details examined, the approved plans considered and the terms interpreted before the claim can be decided.

49. The respondents' objection that the approved plans do not show the terrace is relevant to the Applicant's claim. But this objection does not, , mean that the dispute cannot be sent to arbitration. Whether the terrace was promised under the PAAA, whether the allotment depended on the approved plans and what relief can be given if the promise is proved are questions which require examination of the evidence and the complete arrangement.

50. The respondents have objected to the Applicant's claim for separate car parking. If this claim is not part of the reliefs sought in the present application, there is no need to decide it here. If the Applicant raises such a claim before the Arbitral Tribunal, it will have to be considered according to the relevant terms and facts. This order does not declare that the Applicant is entitled to the terrace or any car parking space.

Whether the claim for transit rent has been proved:

51. The Applicant says that Respondent Nos. 2 to 4 failed to pay monthly transit rent as required under paragraph 61 of the SDA. The respondents, however, say that rent was regularly paid until 23 August 2022. They admit that Respondent No. 2 “regularly paid the monthly compensation/rent to the Applicant” until that date. They have said that they are ready to pay rent as required.

52. The respondents' admission that rent was paid until 23 August 2022 is relevant. It shows that payments were made in connection with the Applicant's earlier premises and the redevelopment arrangement. But it does not establish what amount was payable after that date or prove that all obligations were fulfilled. The Applicant says that some amounts were left unpaid, while the respondents dispute this. Whether rent continued to be payable, the period for which it was payable and how the payments made should be taken into account will have to be decided after examining the evidence.

53. The application mentions different amounts calculated for different dates. The Applicant claims that Rs. 13,91,858/- remained unpaid as on 31 May 2023 after giving credit for a part payment. He claims Rs. 73,05,937/- as on 1 August 2023 towards rent, double rent and interest. These are disputes about whether any liability exists and, if it does, how much has to be paid. The respondents' denial does not mean that there is no arbitration agreement. At the same time, the Applicant cannot get the amounts claimed only because an Arbitrator is appointed. The

Arbitral Tribunal will have to examine the agreements, accounts, payments and calculations of both sides before deciding what amount, if any, is payable. The present application seeks arbitration for the transit rent dispute as well as the dispute about the terrace. Both claims are said to arise from the PAAA and the later redevelopment arrangement. They are disputes for which the arbitration clause has been invoked. Whether the Applicant succeeds in either claim, fully or partly, is different from the question whether the disputes can be sent to arbitration.

Effect of the pending MahaRERA proceedings:

54. The respondents next say that the Applicant has filed Complaint No. CC006000000303322 before the MahaRERA Authority and cannot again ask for the same reliefs through arbitration. The Applicant says that the MahaRERA proceedings have been disclosed in this application. He further says that the notice invoking arbitration was issued without affecting those proceedings and that the disputes raised here have not been decided by any other forum. According to him, the reliefs claimed in the two proceedings are different.

55. The fact that a proceeding before a statutory authority is pending cannot be ignored. But merely because another proceeding has been filed, it does not follow that every dispute between the parties must be kept out of arbitration. The nature of the dispute, the reliefs claimed, the powers of the statutory authority and the legal effect of the pending proceedings have to be examined before reaching such a conclusion.

56. In *M. Hemalatha Devi v. B. Udayasri,* 2023 INSC 870, the Supreme Court considered whether a consumer could seek a remedy under the Consumer Protection Act even when an arbitration agreement existed. The Court held that the nature of the dispute and the statutory remedy available to the consumer are important in deciding whether the matter can be referred to arbitration. However, that case concerned proceedings under consumer protection law. Its principles cannot be applied to every dispute only because a proceeding is pending before a statutory authority under another law.

57. The decision in *The Zoroastrian Radih Society*, considered an objection based on pending consumer proceedings. In that case, the Applicant gave an undertaking that it would not press and would withdraw the interim application seeking monetary reliefs before the consumer forum. This Court accepted that undertaking and held that, in those circumstances, the objection about overlapping monetary claims was not enough to refuse appointment of an Arbitrator.

58. The facts in the present case are different. The Applicant has not given any undertaking to withdraw the MahaRERA complaint. He says that the reliefs claimed in the two proceedings are different, while the respondents say that the same reliefs are being claimed in both. The material before this Court is not enough to hold that all the claims before MahaRERA are the same as the claims sought to be referred to arbitration. There is no material to show that the disputes raised in the present application have been decided by that authority.

59. The respondents' objection cannot be accepted as an absolute bar to appointing an Arbitrator only because the MahaRERA complaint is pending. However, this order does not allow the Applicant to obtain the same relief twice. Nor does it mean that every claim made before MahaRERA can be referred to arbitration. The legal effect of those proceedings, any claims which overlap and the extent to which the disputes can be referred to arbitration will have to be considered according to law. The Applicant shall place the relevant pleadings and orders from the MahaRERA proceedings before the Arbitral Tribunal. Any question about a statutory bar, the choice of remedies or prevention of double recovery shall remain open for decision, to the extent that it falls within the Tribunal's jurisdiction.

Alleged failure to produce the Development Agreement:

60. The respondents have alleged that the Applicant deliberately did not attach the registered Agreement for Redevelopment dated 27 August 2012, registered on 28 August 2012 under Serial No. BDR-11-07189-2012, because he wanted to mislead this Court. They rely on this document to say that the members were promised only the carpet area which they were occupying earlier and were not promised any additional terrace area.

61. The Agreement for Redevelopment is relevant for deciding what the Applicant is entitled to under the contract. The respondents have relied on this document in support of their defence, and the relevant clause has been placed before this Court. However, merely because the Applicant did not attach the

document at the beginning, and it is now available for consideration, it cannot be concluded that he intended to mislead the Court. There must be some material to support such a finding. In any case, it is not necessary to make such a finding for deciding the present application. There is a difference in the dates mentioned while describing the redevelopment arrangement. The Applicant refers to 25 March 2014, whereas the respondents rely on the Agreement for Redevelopment dated 27 August 2012, registered on 28 August 2012. The PAAA and the SDA refer to the registered redevelopment arrangement by giving its particulars. This difference in the dates does not take away the arbitration clause from the PAAA or decide whether the substituted developer agreed to follow its terms. If this difference affects the meaning or application of any provision, the parties may place the relevant documents before the Arbitral Tribunal. No final finding about the terrace or rent claims is being made on this ground.

Scope of examination under Section 11:

62. After considering the above submissions, I find that there is a written arbitration agreement in the PAAA. Clause 46 provides for arbitration, and the Applicant has invoked that clause for disputes concerning the performance of obligations under the redevelopment arrangement. The question is whether the fact that Respondent Nos. 2 to 4 did not sign the PAAA is enough to stop these disputes from being referred to arbitration. For the reasons stated, it is not enough. The SDA substitutes Respondent No. 2 under the earlier redevelopment arrangement and the individual PAAAs. It requires the obligations mentioned in those agreements

to be performed. When the provisions of the SDA are read with Clauses 1 and 46 of the PAAA, there is a sufficient prima facie basis for referring the disputes concerning Respondent No. 2 to arbitration. The respondents have not shown any clear provision which excludes the arbitration clause in the PAAA from the obligations accepted under the SDA.

63. The position of Respondent Nos. 3 and 4 is different because their individual capacity and involvement have not been established from the material placed before this Court. As explained in *Cox & Kings Ltd*, whether a non-signatory is bound by an arbitration agreement must be decided by examining the arrangement and objective evidence showing that person's involvement. Respondent Nos. 3 and 4 cannot be treated as bound only because they are connected with Respondent No. 2. Their position may be examined by the Arbitral Tribunal according to law, including the principle stated in paragraph 170.12 of that judgment.

64. The objection that the SDA does not contain a separate arbitration clause is not enough to refuse reference to arbitration. The SDA adopts the earlier redevelopment arrangement and requires the new developer to perform the obligations contained in it. Clause 69, which refers to the jurisdiction of the Courts at Mumbai, does not exclude the arbitration clause in the PAAA. The decision in *Hirani Developers* and the principles explained in *M.R. Engineers, NBCC* and *National Skill Development Corporation* support reading the connected agreements together instead of treating every document separately.

65. The other objections raised by the respondents concern the actual claims made by the Applicant. Whether he is entitled to the terrace, whether the approved plans affect that entitlement, whether transit rent continued to be payable after 23 August 2022, whether the 10% increase applies throughout the period claimed and whether double rent or interest is payable are all disputed questions. These matters require examination of the agreements, approved plans, accounts and other evidence. The respondents will be able to raise their objections before the Arbitral Tribunal.

66. The Applicant's claims cannot be treated as proved merely because an Arbitrator is appointed. At the same time, the respondents cannot avoid arbitration only by denying the claims when the disputes arise from a arrangement which, on a prima facie examination, contains an arbitration clause applicable to the substituted developer. The purpose of referring the disputes to arbitration is to provide a forum where they can be decided according to law. Appointment of an Arbitrator does not decide the rights of either side in advance.

67. After considering all the material placed before this Court, I find that the Applicant has shown sufficient grounds for appointing a Sole Arbitrator to decide the disputes arising from the PAAA and the connected redevelopment agreements.

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

A) Ms Shruti Tulpule, an Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate

upon the disputes and differences arising from the Agreement for Permanent Alternate Accommodation dated 21 June 2014, read with the Supplementary Development Agreement dated 28 December 2015;

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Email: satulpule@outlook.com

Contact: 98234 74226

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as may be indicated by the Learned Sole Arbitrator, for obtaining appropriate directions with regard to the conduct of the arbitral proceedings, including fixing the schedule for filing of pleadings, examination of witnesses, if any, and dates of hearing. At such meeting, the parties shall furnish to the Arbitral Tribunal valid and functional email addresses, together with the mobile and landline telephone numbers of their respective Advocates. Communications sent to the said email addresses shall constitute valid service of correspondence in connection with the arbitral proceedings.

E) All arbitral costs and fees of the arbitration and of the Arbitral Tribunal shall be borne by the parties equally in the first instance. The same shall, however, remain subject to any final Award that may be passed by the Arbitral Tribunal in relation to costs.

69. The question whether Respondent Nos. 3 and 4 are individually bound by the arbitration agreement shall remain open for decision by the Arbitral Tribunal according to law.

70. The Learned Sole Arbitrator shall be at liberty to adjudicate upon the claims and counterclaims, if any, and to determine all questions relating to merits, in accordance with law.

71. 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.

72. The Commercial Arbitration Application stands disposed of in above terms.

(AMIT BORKAR, J.)