IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.14635 OF 2024
IN
ARBITRATION PETITION NO.338 of 2001

Win Construction Pvt. Ltd. ....Applicant

IN THE MATTER BETWEEN

Pratap K Thakkar / Sejpal & Anr . ....Petitioners

Versus

Rajendra D Shah & Ors. ....Respondents

Mr. Mohit Khanna *a/w. Bijal Gandhi i/b. D M Legal Associates, Advocates for Applicant.*

Mr. Rubin Vakil *a/w. Shabbir Jariwala i/b. Jariwala & Associates, Advocates for Original Petitioner/Proposed Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: JUNE 22 2026

Judgement:

Context and Factual Background:

1. The captioned Interim Application has been taken out in Arbitration Petition No.338 of 2001 (***"Section 9 Petition"***) filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***"the Act"***). The Section 9 Petition had been disposed of by an Order dated December 2, 2002. The Court Receiver

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appointed under the Section 9 Petition, as a measure of preservation of the subject matter of the arbitration agreement, continues till date. The Interim Application seeks discharge of the Court Receiver.

2. The factual matrix relevant for purposes of this Application is truly peculiar and must necessarily be noticed since the appointment and discharge of a Court Receiver is driven by equitable considerations. The Section 9 Petition had been filed by Mr. Pratap K. Thakkar/Sejpal ("***Pratap***") and Mr. Bhagwandas K. Thakkar/Sejpal (collectively ***"the Sejpals"***) against Mr. Rajendra D. Shah (***"Rajendra"***) and his three daughters, Preeti T. Shah, Pooja C. Shah and Payal R. Shah (collectively ***"the Shahs"***). Certain others who had been considered relevant for purposes of reliefs when the Section 9 Petition was filed, were also parties. The Shahs and the Sejpals were partners at all times relevant to the Section 9 Petition in a partnership firm called M/s Shah and Sejpal Developers (***"Firm"***).

3. The Applicant, Win Construction Pvt. Ltd. (***"Applicant"***) represented by its Director, one Mr. Sunny Shah is said to be the owner of the land bearing C.T.S. No.251 located at Malad (East) and more particularly described in the Interim Application (***"Subject Property"***). Redevelopment of the Subject Property was subject matter of four Development Agreements, all dated May 29, 1997 (***"Development Agreements"***) executed between Applicant and the

Firm in identical terms, covering in the aggregate, development of 16,500 square feet of area with the value of the Floor Space Index being agreed at the rate of Rs.1,741/- per square feet.

4. The Section 9 Petition related to arbitration of disputes and differences between the Shahs and the Sejpals over the manner of implementing the redevelopment pursuant to the Development Agreements by the Firm, and did not involve the Applicant. An Arbitrator appointed by the parties directed maintenance of *status quo* and granted certain interim reliefs on April 11, 2001. However, the Sejpals alleged that Rajendra had altered the *status quo*, and filed the Section 9 Petition, seeking the relief of appointing a Court Receiver to preserve and protect the subject matter of the arbitration agreement. The Court Receiver came to be appointed by the Section 9 Court, on July 3, 2001 (***"July 2001 Order"***).

5. In the Section 9 Petition, Contempt Petition No.102 of 2001 was filed by the Sejpals alleging eight different violations by Rajendra. This led to further protection over the Subject Property and its redevelopment, in the form of an order dated November 2, 2001 (***"November 2001 Order"***) directing the Court Receiver to take physical possession of the Subject Property.

6. Meanwhile, Rajendra's wife, who was a Partner in the Firm passed away and the three daughters of Rajendra claimed their share in the Firm to the

extent of their mother's entitlement. These daughters relinquished their rights eventually and were discharged, making Rajendra the primary party in the matter.

7. The Subject Property having become *custodia legis*, is in the hands of the Court Receiver, and such custody has continued till date. The Applicant, not being a party to the Section 9 Petition, filed Notice of Motion No. 2806 of 2001 (***"IA 2806"***), seeking recall and setting aside of the July 2001 Order. The Applicant has pleaded that Notice of Motion was disposed of during the lifetime of the father of Mr. Sunny Shah and that a copy of the order disposing of IA 2806 is not available.

8. However, the reply to the Interim Application filed by Pratap has brought on record an order dated December 2, 2002 ("***December 2002 Order***") passed by a Learned Single Judge of this Court, by which IA 2806 was disposed of. The Learned Single Judge framed a limited issue as to whether the appointment of the Court Receiver in the context of the disputes between Sejpal and Rajendra ought to be recalled, with the property ceasing to be *custodia legis*. The Learned Single Judge was pleased to hold that the Subject Property should remain in the custody of the Court Receiver and the benefit of such custody would also be available to the Applicant as indeed to all the parties. The Learned Single Judge noticed the Applicant's contention that the

property of the partnership firm was only the development rights over the Subject Property and not the Subject Property itself, and that development rights were incapable of being specifically enforced. The Learned Single Judge noted that the Firm had spent significant resources pursuant to the Development Agreement and was pleased not to disturb the possession of the Court Receiver over the Subject Property.

9. The disputes and differences between the Shahs and the Sejpals were adjudicated by an arbitral award dated April 20, 2005 (*"Arbitral Award"*), which gave Pratap full charge and responsibility of implementing the project; completing the redevelopment; and maintaining accounts to ensure eventual distribution of profits as per the Partnership Deed to the respective partners. The Arbitral Award entailed Pratap approaching the Court Receiver to take a discharge of the Subject Property and to complete the redevelopment within a period of two years and to implement the project pursuant to the Development Agreement.

10. The Applicant too had sought to terminate the Development Agreement and towards this end, had filed Arbitration Application No.153 of 2003 under Section 11 of the Act for appointment of an arbitrator to adjudicate disputes between the Applicant and the Firm. The Applicant and the Firm settled all disputes and differences pursuant to Consent Terms dated April 6, 2009,

which were reduced to writing in a consensual arbitral award dated April 8, 2009 ("***Consent Award***"). Under the Consent Award, the Applicant was to obtain approval and sanction from the Municipal Authorities, subject to payments to be made by Pratap. The Firm was to pay a total sum of Rs.80 lakhs to the Applicant, of which Rs.13 lakhs were paid upfront, and the balance Rs.67 lakhs were payable within 90 days of compliance by the Applicant with all obligations set out in the Consent Award. On such amount payable by the Firm, interest at the rate of 15% per annum was also payable to the Applicant until the eventual final payment.

11. According to the Applicant, despite the Arbitral Award and the Consent Award, Pratap did nothing and did not implement the development contracted under the Development Agreement. The Applicant contends that various letters following up and asking for compliance with the Consent Award have met with no progress from Pratap or the Firm. A notice to terminate the Development Agreement was issued by the Applicant on July 23, 2012 (***"Termination Notice"***). A response dated September 4, 2012, to the Termination Notice blamed the Applicant for non-compliance with the Consent Award.

12. Over two years later, on February 19, 2015, the Applicant issued a public notice intimating the world at large about the termination of the Development

Agreement. Pratap responded by a letter dated March 5, 2015, asserting that the Subject Property was *custodia legis* with the Court Receiver who was guarding the same, and that the public notice ought to be withdrawn. Suffice it to say, neither was the Termination Notice challenged by the Firm nor did the Applicant take up any steps pursuant to the Termination Notice, including seeking discharge of the Court Receiver.

13. Pratap filed Chamber Summons No.707 of 2017 seeking to have the Court Receiver discharged from the July 2001 Order and the November 2001 Order to enable him to carry out the redevelopment in accordance with the Arbitral Award. According to the Applicant, the Chamber Summons was never moved by Pratap, indicating his lack of interest. He would contend that even the objections in the Chamber Summons were not removed, evidencing his abandonment of the project.

14. The Applicant contends that an incomplete RCC structure of 23 years ago now stands in the premises in a dilapidated condition. The Applicant contends that after the demise of Mr. Sunny Shah's father, he obtained copies of the proceedings and has now been advised to move the captioned Interim Application seeking discharge of the Court Receiver.

15. The Applicant contends that the Arbitral Award had become a decree and indeed even the Consent Award is a decree, and no party has mounted a

challenge. The Applicant would contend that since the Arbitral Award which resolved the dispute between the Shahs and the Sejpals, has not even been executed and more than 12 years have gone by, attracting limitation under Article 136 of the Limitation Act,1963, the very purpose for which the Court Receiver had been appointed has become redundant.

16. The Applicant submits that Pratap filed Execution Application (L) No.2837 of 2021, which was rejected by the Prothonotary & Senior Master on October 9, 2023. Considering that multiple attempts to resolve the issue have failed, the Applicant has filed the Interim Application seeking reliefs in the form of this Court being pleased to discharge the Court Receiver appointed pursuant to the July 2001 Order and the November 2001 Order and to restrain the Shahs and the Sejpals from interfering with the Applicant's possession and enjoyment of the Subject Property.

Analysis and Findings:

17. It is against the aforesaid factual backdrop, that I have heard at length, Mr. Mohit Khanna, Learned Advocate on behalf of the Applicant and Mr. Rubin Vakil, Learned Advocate on behalf of Pratap. At the threshold, it is clear that the July 2001 Order was passed in exercise of jurisdiction under Section 9 of the Act in connection with the disputes and differences between the Shahs and the Sejpals, which was an intra-Firm dispute among the

partners of that Firm. In the Contempt Petition No.102 of 2001 filed by Pratap in the very same Section 9 Petition, on the premise of contempt of the July 2001 Order, by Rajendra entering upon occupation of Shop No.1 and Flat Nos.201, 301, 302 and 303, another Learned Single Judge of this Court was pleased to appoint the Court Receiver to take physical possession of the entire Subject Property. Possession with the Court Receiver has continued till date.

18. I have carefully examined the Arbitral Award passed in resolution of the disputes and differences between Shah and Sejpal as indeed the Consent Award, and the communication between Applicant and the Firm pursuant to the Consent Award.

19. At first blush, it appeared attractive to hold that the very reason for appointing the Court Receiver having run its course, with the Arbitral Award having been passed, and nothing having been done by the beneficiary of the Arbitral Award, no useful purpose would be served by continuing to keep the Subject Property in the custody of the Court Receiver.

20. It is also clear that in disposal of IA 2806, the Learned Single Judge clearly extended the benefit of the Court Receiver to the Applicant as well. Under the December 2002 Order, after rejecting the request for discharge of the Court Receiver, it was held that significant resources had been expended in the re-development and it would not be appropriate to discharge the Court

Receiver and bring the parties back to their pre-Development Agreement position and that too when the Arbitral Tribunal had yet to adjudicate the matter.

21. Most significantly, the Applicant and the Firm struck a new bargain by way of the Consent Award. The Arbitral Award was passed in 2005 while the Consent Award was passed in 2009. The new bargain struck under the Consent Award sets out obligations to be discharged by the Applicant as well as by Pratap. Each party blames the other for default on the respective obligations, and the questions of who has complied with what element of the bargain and who is responsible for which breach are facets of a new cause of action. It is for the parties to initiate proceedings as advised to assert their rights. It would not be open to this Court to be unmindful of its jurisdiction – inherently an equitable jurisdiction under Section 9 of the Act and that too when there has been a continuum of events and developments after the appointment of the Court Receiver.

22. It is clear that possession of the Subject Property was taken by the Court Receiver from the Firm. It is equally clear from the Consent Award that the Applicant has acknowledged that possession for all practical purposes was with Pratap, who too has been stalled from creating any third party rights until the Applicant obtains the sanctions. However, possession having been taken

over from the Firm by the Court Receiver, discharging the Court Receiver would not lead to the Applicant getting possession. What the Applicant seeks is that the Firm and Pratap be prevented from interfering with the Applicant's purported possession but the Subject Property is *custodia legis* and actually in the possession of the Court Receiver.

23. Indeed, the Applicant, who is referred to as the "Claimant" in the Consent Award had to perform the specific obligation of obtaining sanction, without which, there is no obligation to pay the balance sum of Rs. 67 lakhs to the Applicant. Once sanctions are obtained, until the payment is made, no further development activity ought to start.

24. The parties have consciously struck a fine bargain balancing against each other which has led to the current logjam. Whether the obligations have been met, and who is at fault, are all facets of a new cause of action that would need to be adjudicated.

25. The following extracts from the Consent Award are noteworthy:

> *2.* ***The Claimants shall*** *within a period of 30 days from the date hereof* ***obtain approval and sanction in respect of the plans*** *from the MCGM and* ***handover to Shri Pratap K. Thakkar/Sejpal on behalf of the Respondents the said approved/sanctioned plans*** *together with the IOD and amended approvals from MCGM* ***for the entire FSI including the Set Back FSI of 15650 sq. ft area as worked out by the Architect M/s H.M. Jhaveri & Sons****. The said* ***amended plans are annexed to the Consent Terms and***

marked as Annexure-I. Out of the aforesaid 15650 sq.ft, the Claimants have already obtained approval of plans to the extent of 11300 sq.ft and as far as the balance FSI of 4350 sq.ft is concerned, the approval of the same shall be obtained by the Claimants for construction on the existing building itself after taking into account the Set Back FSI available on the said property. In consideration of the Claimants Agreement to handover the said approved/sanctioned plans the Respondents shall pay to the Claimants a total final further balance sum of Rs. 80,00,000/- (Rupees Eighty Lacs Only) in the manner set out hereinafter. It is clarified and agreed that the charges for regularization if any to be levied by the Corporation for regularizing the construction carried out by the Respondents on the said building beyond 2nd Floor, shall be paid exclusively by the Respondents. After the said amount if any demanded by the Corporation towards Regularization Charges are paid over to the Corporation, the Claimants shall be liable to obtain the said approved/sanctioned plan from the Municipal Corporation of Greater Mumbai, I.O.D. and the amended approvals for the entire F.S.I. including the set-back F.S.I. aggregating to 15,650 sq.ft. within a period of 30 (thirty) days from the date of the said payment.

3. The Respondents has through its Partner Shri Pratap K. Thakkar/Sejpal on or before the execution of the said Consent Terms paid to the Claimants a sum of Rs. 13,00,000/- (Rupees Thirteen Lacs Only) out of the total final further balance entire aggregate amount of Rs. 80,00,000/- (Rupees Eighty Lacs Only) to be paid by the Respondents to the Claimants. The said amount of Rs. 13,00,000/- (Rupees Thirteen Lacs Only) has been paid by the Respondents to the Claimants to incur necessary expenses for obtaining sanctioned/ approved plans with the benefit of the Set Back FSI, IOD, amended approvals from the MCGM as mentioned in Clause-2 above, for defraying expenses and making payments of various amounts such as scrutiny fees, balcony enclosure premium, staircase premium etc. In the event, the expenses for the above purposes or for any other purposes exceeds Rs.13,00,000/- than the said excess amount of expenses shall be borne and paid by the Claimants only.

9. The Respondents agree that till the entire aggregate amount of Rs. 80,00,000/- as stated hereinabove is paid over to the Claimants, the Respondents will not create any third party rights of any nature whatsoever in the said property or any part thereof or will not part with possession of the suit property or any part thereof. The Respondents further agree not to commence any construction activities till the payment of the said balance of Rs.67,00.000/-- (Subject to the Amount of rebate to which the Respondents would be entitled to as per Clause 10 (d) herein below) is paid to the Claimants. It is, however, made clear that if the Respondents wish to raise funds to make payment of the Claimants dues under this Consent Terms, they can enter into some arrangement with such Third Party creating right in the suit property in favour of the Third Party subject to such third party making entire payment of the Claimants' balance dues i.e. the balance amount of Rs. 67,00,000/- (subject to the amount of rebate which the Respondents would be entitled to as per Clause 10 (d) herein below) under the said Consent Terms simultaneously at the time of creation of rights by the Respondents in favour of such third party.

10(f). It is further agreed that the period of 90 days for payment of the balance consideration of Rs. 67,00,000/- (Rupees Sixty Seven Lacs) or such lower amount after claiming rebate of expenses as per sub-clause (d) above, shall commence only from the date on which the said approved/ sanctioned plans for the entire FSl of 15,650 sq. ft. is obtained and handed over to Mr. Pratap K. Thakkar/ Sejpal on behalf of the Respondents.

11. Within 90 days of the Claimants complying with all the obligations including to hand over to the Respondents approved plans along with IOD amended approval etc. in respect of the 15650 sq.ft on the existing structure, the Respondents shall make payment of the balance amount of Rs.67,00,000/- making an aggregate amount of Rs. 80,00,000/- to the Claimants. Upon receipt of the said total payment of Rs. 80,00,000/-, the Claimants shall cease to have any right, title or interest of any nature whatsoever in or over the suit property and said Mr. Pratap K. Thakkar/ Sejpal acting

for and on behalf of the Respondents and its nominee/nominees and/or assigns shall be the sole and absolute owner of the suit property to the complete exclusion of the Claimants.

*12. **In the event, the Respondents commits default in making payment of the balance amount of Rs. 67,00,000/- within 90 days from the date of compliance of all the obligations** by the Claimants as per Clauses 2, 4 and 7 hereinabove, **the Respondents shall be liable to pay interest @ 15% Per Annum after the expiry of the said period of 90 days till payment of the entire balance amount of Rs. 67,00,000/- or such part thereof as remained outstanding.***

*14. **The said Consent Terms shall be treated as conveyance in favour of the Respondents** and/or their nominee/nominees and/or assigns upon full and final aggregate payment of Rs. 80,00,000/- including Rs. 13,00,000/- paid upon signing of Consent Terms and rebate as per Clause 10 (d) of these Consent Terms being made to the Claimants.*

[Emphasis Supplied]

26. A plain reading of the foregoing would indicate that a new bargain came to be created by the Consent Award. It is also apparent that the Applicant had been the one who had obtained sanctions for the 11,300 square feet of FSI until then and had committed to get the balance. Regularisation charges for construction beyond the second floor were to be ascertained and it is only upon payment of such charges by Pratap that the Applicant would have been responsible to obtain the approvals. Likewise, it is only upon obtaining of the approvals that the obligation to pay the balance would arise. In short, by the

Consent Award, the parties had struck a precise counter-balancing bargain, and the contentions and the purported cause of action being pursued today are based on who was to perform which obligation under the Consent Award. The parties even agreed that the Consent Terms were in the nature of a conveyance of the Subject Property by the Applicant to Pratap and the Firm, subject to the payments being made. Therefore, this was a case of the Subject Property directionally going out of the hands of the Applicant. Disputed contentions about all of this would necessitate adjudication. They cannot be answered in an equitable jurisdiction in a disposed of Section 9 Petition without a trial of questions of fact that have been raised by the parties.

27. What is also noteworthy is that throughout the period in which the Consent Award was created and the parties engaged over it, the Court Receiver continued to be in possession of the Subject Property. Therefore, a direction to Pratap not to interfere with the possession of the Subject Property is a matter of positive relief that cannot be granted in this Interim Application but would need a full-blown proceeding where issues can be tried. It is noteworthy that arbitration was threatened by a letter dated July 23, 2012, but evidently, it was not followed through.

28. Therefore, considering that the appointment and discharge of the Court Receiver would entail equitable considerations, one cannot ignore the fact that

all through the proceedings and the record examined in this matter, directionally, the Applicant is a mode of exiting from the Subject Property and it would not be possible to have a direction to give him the possession of the Subject Property. The parties indeed appear to be stuck in a stalemate and logjam but in commercial matters, parties are known to engage in resolving such logjams through commercial bargains. For this Court to discharge the Court Receiver, it would necessarily follow that the last known position from the Court records and indeed the parties' own position, is that the Subject Property was not in the possession of the Applicant when it was taken by the Court Receiver. Even ignoring the Court Receiver, it is apparent that even in 2009, possession of the Subject Property, in terms of the Consent Award was seen to be with Pratap and the Firm.

29. The letter dated July 23, 2012 from the Applicant was responded to by a letter dated September 4, 2012 by which, it was asserted by the Firm that it was the Applicant's obligation to have approvals obtained from the Municipal Authorities and that a sum of Rs.13 lakhs had already been pocketed by the Applicant. The obligations that were to be performed by the Applicant not having been performed, it was asserted by the Firm that it was for the Firm to be refunded, the amounts wrongly held by the Applicant. These are all triable issues that would need adjudication by an appropriate forum – either a Court or an Arbitral Tribunal to be pursued by the respective parties as advised. It is

not possible for this Court to adjudicate such intricate facts and direct handing over of possession of the Subject Property to the Applicant.

30. Therefore, the current cause of action being distinct and separate and that too emanating from facts that have transpired after the appointment of the Court Receiver, there is no basis to suddenly and simply discharge the Court Receiver and also direct that the Subject Property be handed over to the Applicant.

31. It is well settled law that the forum to discharge the Court Receiver has to be the forum that appointed the Court Receiver. Therefore, it cannot be said that this Interim Application has been filed in the wrong forum. However, on consideration by the validly chosen forum, if the factual matrix is such that the reliefs sought simply cannot be granted (direction not to disturb the Applicant's purported possession) or that the relief of discharge of the Court Receiver would not be equitable to grant (discharge of the Court Receiver when the parties are still enmeshed in disputes), the Interim Application cannot be allowed.

32. To repeat, indeed, the Court Receiver initially came to be appointed in relation to the disputes between the Shahs and the Sejpals. The Sejpals prevailed and the Shahs have not managed to challenge the Arbitral Award. The Sejpals were clearly given the right to have the Court Receiver discharged

and if the Subject Property could not be developed for any reasons out of the control of Pratap, it was ruled in the Arbitral Award, that the Subject Property could be disposed of. That too would need discharge of the Court Receiver, but Pratap is not the applicant seeking discharge of the Court Receiver.

33. If the appointment of the Court Receiver is treated as being in aid of the arbitration between the Shahs and the Sejpals, the entitlement of the Sejpals to have the Subject Property sold would mean that the possession of the Court Receiver would abide by such outcome. However, meanwhile, the December 2002 Order provided that the possession by the Court Receiver would also enure to the benefit of the outcome in the dispute between the Applicant and the Firm. That outcome is contained in the Consent Award, which has been discussed above. If the Applicant felt that the Consent Award was clearly of the nature that he canvasses, it would have followed that he would have chosen to execute it. It is evident that a period of twelve years has transpired since the Consent Award too and there is no sign of execution of the Consent Award either.

34. Meanwhile, there are disputes over the Consent Award and who is responsible for non-compliance with it. Possession of the Subject Property is envisaged as being with Pratap and the counter-balancing measures contracted by the parties have already been discussed above. The precise

adjudication of questions of fact pursuant to the Consent Award would require a trial in appropriate proceedings. It would simply not be just and convenient to discharge the Court Receiver and it would not be appropriate to also hand over possession of the Subject Property to the Applicant, when the outcome in the Consent Award by which the Subject Property would have to abide, entails a conveyance to Pratap.

35. Therefore, the Applicant has pleaded that the Arbitral Award cannot be executed now, but that would not explain how the Subject Property can be released to the Applicant, who himself has agreed on a framework of conveyance of the Subject Property to Pratap by way of the Consent Award. Therefore, I am constrained to hold that the reliefs sought in the Interim Application cannot be granted; it deserves to be dismissed; and the custody over the Subject Property in the hands of the Court Receiver would need to abide by the outcome of any substantive proceedings that the parties may engage in.

36. It is made expressly clear that all observations in this judgement are only made in aid of adjudicating as to whether the Court Receiver can be discharged with possession being handed over to the Applicant. Nothing in this judgement is a pronouncement on merits of the respective claims of the Applicant and Pratap. They are at liberty to initiate such proceedings or

resolution outside proceedings as advised. Suffice it to say, it would not be at all possible to hand over possession of the Subject Property by way of disposal of this Interim Application to the Applicant.

37. For the aforesaid reasons, the Interim Application is ***dismissed***. The parties are at liberty to initiate such proceedings as advised, to have their substantive rights adjudicated. The possession of the Subject Property with the Court Receiver shall abide by the outcome of such proceedings as the parties may initiate to adjudicate their substantive rights.

38. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]