



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO.13956 OF 2026
WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.14176 OF 2026

M/s. Pioneer Constructions,

...Petitioner

V/s.

Sahakarnagar Co-operative Housing
Society Ltd.

...Respondent

Mr. D.D. Madon, Senior Advocate and Mr. Ashish Kamat, Senior Advocate with Mr. Shakeeb Shaikh, Ms. Sachi Lodha, Mr. Aftab Diamondwala & Ms. Trushti Talekar i/b. M/s. Diamondwala & Co. for the Petitioner.

Mr. Chaitanya Chavan with Mr. Nikhil Jayakar i/b. Mr. Ankit Dubey for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Reserved on: 22 APRIL 2026.

Pronounced on: 24 APRIL 2026

Judgment :

1) Commercial Arbitration Petition (L) No.13956 of 2026 filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings.

2) Commercial Arbitration Application (L) No.14176 of 2026 is filed under Section 11 of the Arbitration Act for appointment of Arbitrator. It is not on board. At the request of the learned counsel appearing for the Applicant, the Application is taken on board for analogous hearing with Commercial Arbitration Petition (L) No.13956 of 2026.

3) Section 9 Petition is filed under an apprehension that the Respondent-Society is likely to execute Development Agreement with the new Developer. The Society has already adopted resolution in General Body Meeting held on 10 January 2026 appointing a new developer. Further Special General Body Meeting (**SGBM**) was scheduled to be held on 23 April 2026 for finalising draft of Development Agreement to be executed with the new developer. The Petitioner has accordingly, filed Section 9 Petition seeking interim measures in terms of the following prayers:

- a. that pending the hearing and final disposal of the arbitral proceedings and for a period of 12 weeks thereafter, this Hon'ble Court be pleased to pass an order and injunction restraining the Respondent and/or their managing committee member/sand/or their office bearer/sand/or any person/s claiming through or under them from in any manner acting upon the Resolution dated 10th January 2026 passed in SGBM being Exhibit "W" and "W-1" hereto and notice dated 9th April 2026 of the Respondent being Exhibit "X" and "X-1" hereto and also from in any manner executing any development agreement and/or any such other agreement authorizing the new developer to proceed with the new development of the said Property as described in para 4 hereinabove.
- b. that pending the hearing and final disposal of the present Arbitration Petition, this Hon'ble Court be pleased to pass an order and injunction restraining the Respondent and/ or their managing committee member/ s and/ or their office bearer/ s and/ or any person/ s claiming through or under them from in any manner acting upon the Resolution dated 10th January 2026 passed in SGBM being Exhibit "W" and "W-1" hereto and notice dated 9th

April 2026 of the Respondent being Exhibit "X" and "X-1" hereto and also from in any manner executing any development agreement and/ or any such other agreement authorizing the new developer to proceed with the new development of the said Property as described in para 4 hereinabove.

c. Ad-interim and interim reliefs in terms of prayer clauses (a) and (b) above.

d. For costs.

e. For such and other reliefs as the nature and circumstances of the case may require.

4) The Respondent is a Society formed by owners/occupiers of 826 residential premises, 19 shops and 24 stalls in 46 buildings constructed in the year 1957 on land belonging to Municipal Corporation of Greater Mumbai at Naigaon Cross Road, 26 Road, Scheme No. 57, Wadala, Mumbai - 400 034. Since the buildings of the proposed society were old and dilapidated, it decided to redevelop the same and accordingly invited offers from the developers. The proposed society selected Petitioner as a Developer. Accordingly, Development Agreement dated 22 January 2013 (**first DA**) was executed in favour of the Petitioner-Developer. The Society was registered on 5 April 2013. The Society applied to the Assistant Registrar of Co-operative Societies, F/N Ward for grant of 'No Objection' for redevelopment of the buildings and by letter dated 11 March 2014 'No Objection' was granted in the Special General Body Meeting (**SGBM**). On 30 September 2014, the Society approved draft of the Development Agreement and accordingly Development Agreement and Power of Attorney were executed in favour of the Petitioner on 22 June 2015. According to the Petitioner, during 2015 to 2018, the sanction of scheme of redevelopment was withheld by the Planning Authority due to proposal for sanction of fresh Development Control Regulations. According to the Petitioner, the Society adopted a resolution in Annual

General Meeting (**AGM**) dated 29 September 2018 to keep on hold the redevelopment proposal until new Development Control Regulations were notified. In the meantime, the society renegotiated the terms of redevelopment with the Petitioner, under which the Petitioner agreed to offer earnest money deposit of Rs.1 crore and to increase the size of Permanent Alternate Accommodations (**PAA**) from 600 sq.ft. to 700 sq.ft. and also agreed to pay corpus to each member of the Society. Accordingly, Development Agreement dated 22 April 2016 (**second DA**) was executed.

5) According to the Petitioner, one Mr. Bhaskar G. Udawant adopted proceedings against the Respondent-Society under Section 21-A of the Maharashtra Co-operative Societies Act, 1960 seeking its de-registration, which delayed the process of redevelopment. The complaint was rejected on 11 May 2022. Petitioner cites the reasons of change in Development Regulations, litigations filed by members and occurrence of Covid-19 Pandemic as reasons for non-commencement of the project. The Respondent issued letters dated 3 December 2021, 7 March 2022 and 13 March 2022 calling upon the Petitioner to explain delay in redevelopment project, which was replied by the Petitioner on 25 April 2022. The Petitioner claims that it forwarded tentative plans, common consent letter, individual consent letters and draft for Agreement for Permanent Alternate Accommodation (**PAA**) vide letter dated 25 April 2022. According to the Petitioner, it was the responsibility of the Respondent-Society to secure common and individual consents from the members. By way of further letter dated 3 October 2023, the Petitioner requested for finalisation of the common consent, individual consents, etc.

6) In the meantime, India Realtech Corporation LLP expressed desire in joining the Petitioner for joint redevelopment of the Society's property. However, in the AGM held on 16 September 2023, the Respondent -Society adopted resolution terminating the appointment of the Petitioner as Developer. However, the society decided to give a chance to the Petitioner to execute the project and by letter dated 6 April 2024, the Respondent-Society withdrew termination letter and restored appointment of the Petitioner as developer. The Respondent also communicated the withdrawal of termination to the Divisional Joint Registrar by letter dated 8 April 2024.

7) By letter dated 10 April 2024, the Respondent -Society wrote to the Petitioner for offering better terms of redevelopment. By letter dated 27 May 2024, the Petitioner called upon the Society to complete all the formalities such as common consent, individual consents and draft Permanent Alternate Accommodation Agreement (**PAAA**). The Society wrote to the Assistant Registrar on 18 June 2024 communicating that it was proceeding ahead with the redevelopment with the Petitioner. However, in the AGM held on 30 September 2024 the society once again adopted resolution for terminating the appointment of the Petitioner. The society claims to have communicated the decision of termination to the Petitioner vide letter dated 4 February 2025, receipt of which is denied by the Petitioner.

8) Though Petitioner's appointment was terminated, it applied to the Divisional Joint Registrar on 24 March 2025 for issuance of revised NOC. By letter dated 1 April 2025, the Divisional Joint Registrar granted

revised NOC permitting the Petitioner to redevelop the property of the Respondent-Society. The Society got aggrieved by NOC granted by the Divisional Joint Registrar vide letter dated 1 April 2025 and filed Revision Application before the State Government. The Revision is allowed by order dated 17 December 2025 setting aside the Divisional Joint Registrar's NOC dated 1 April 2025.

9) The Society invited proposals from developers and proposals were received in the SGBM held on 3 March 2024. The society held further SGBM on 10 January 2026 appointing a new developer to execute redevelopment project. The Society has published a notice on 9 April 2026 proposing to hold further SGBM on 23 April 2026 for finalisation of draft Development Agreement to be executed with the new developer. The Petitioner has accordingly filed the present Petition seeking to restrain the Society from moving ahead in the development project with the new developer. The Respondent-Society has put in appearance after receipt of private service and has sought time to file affidavit-in-reply opposing the Petition. However, since the meeting of the Special General Body of the Society is scheduled on 23 April 2026, the Petition is pressed by the Petitioner and the same is opposed by the learned counsel appearing for the Respondent-Society in absence of affidavit-in-reply.

10) I have heard Mr. Madon, the learned Senior Advocate appearing for the Petitioner-Developer, who submits that the Petitioner-Society cannot proceed to appoint a new developer without even bothering to terminate the appointment of the Petitioner. He submits that the earlier termination effected on 15 September 2023 is withdrawn by the Society on 6 April 2024 and no cause arose for once again terminating the

Petitioner's appointment in the alleged SGBM on 30 September 2024. That the Petitioner was not made aware of the resolutions adopted in the SGBM on 30 September 2024 and no notice is given to it in respect of the decision taken in the said meeting.

11) Mr. Madon further submits that under clauses 4 and 5 of the second Development Agreement of 2016, it was the responsibility of the Society to secure 70% individual consents whereafter the Petitioner was supposed to approach to MCGM for securing necessary permissions. That the Society has failed to secure consent letters from the society members and is erroneously accusing Petitioner of delay. That after withdrawal of earlier termination on 6 April 2024, the Society has not secured consent letters from the members of the Society and has erroneously proceeded to terminate the Petitioner's appointment in the purported SGBM of 30 September 2024. That the purported letter dated 4 February 2025 shown to this Court recording termination of Petitioner's appointment was never served on it.

12) Mr. Madon further submits that there is no termination clause in the Development Agreement and therefore it is impermissible to terminate the same without securing leave of the Court. He relies on judgment of the Hon'ble Supreme Court on **K.S. Majunath and Others V/s. Moorasavirappa alia Muttanna Chennappa Batil since deceased by his LRs and Others**¹ He further submits that all allegations of delay prior to 6 April 2024 are deemed to have been condoned and the society has acquiesced in the same on account of withdrawal of earlier termination. He relies on judgment of the Hon'ble Supreme Court in **All India Power**

1 2025 SCC OnLine SC 2378

Engineer Federation and Others V/s. Sasan Power Limited and Others².

He submits that the Respondent-Society is going ahead with new developer out of greed of securing higher benefits. That the Society has acted in complete breach of the Development Agreement and therefore, grant of interim measures is necessary.

13) The Petition is opposed by Mr. Chavan, the learned counsel appearing for the Respondent-Society, who submits that the Petitioner has grossly delayed the redevelopment process. That despite Petitioner's appointment made in the year 2013, it has done absolutely nothing during last 13 long years. That beyond spending an amount of Rs.1 crore towards earnest money deposit, the Petitioner has not incurred any expenditure. That the intention of the Petitioner in filing the present Petition is to keep the redevelopment project in continuous state of litigation. That the Society is entitled to have the project completed through another developer. He submits that the Petitioner's appointment is earlier terminated by the General Body of the Society on 15 September 2023. However, Managing Committee has unauthorisedly withdrawn termination on 6 April 2024. That the decision to withdraw termination was not taken by the General Body. That the General Body once again terminated the appointment vide Resolution dated 30 September 2024. That the Petitioner was communicated decision of termination vide letter dated 4 February 2025. He submits that despite his termination, the Petitioner has erroneously secured NOC from the Divisional Joint Registrar on 1 April 2025, which NOC was challenged by the Society before the Hon'ble Minister, Co-operation. That by order dated 17 December 2025, the Hon'ble Minister has allowed the Revision

² (2017) 1 SCC 487

setting aside the Divisional Joint Registrar's NOC of 1 April 2025. Thus, there is no NOC available with the Petitioner for carrying out redevelopment process of the Respondent-Society. That the Petitioner is thus free to carry out redevelopment project through the Developer of its choice. He further submits that the Petitioner was always aware of passing of resolution dated 30 September 2024 as well as various decisions taken by the Society from time to time. He places on record the affidavit-in-reply filed by the Petitioner before the Hon'ble Minister. Mr. Chavan accordingly prays for dismissal of the Petition.

14) Rival contentions raised on behalf of the parties now fall for my consideration.

15) The disputes and differences have arisen between the parties out of the Development Agreement dated 22 June 2015 as amended vide fresh Development Agreement dated 22 April 2016. There is arbitration agreement between the parties in clause 31 of the Development Agreement dated 22 April 2016, which reads thus:

31. If at any time dispute, difference or question arises between the parties hereto or between either of the parties and the representatives of the other party or between their or any of their representatives, touching, pertaining, affecting, concerning or relating to the terms of this Agreement or the existence, construction, validity or meaning of these presents or the rights or liabilities of the parties hereto or their representative under these present or otherwise relating to the premises then every such dispute, difference or question shall be referred to arbitration under the provisions of Arbitration & Conciliation Act, 1996 and any re-enactment or modification thereof for the time being in force, shall be adopted. The parties hereto agree that the sole Arbitrator shall be Shri Sandeep Dolas, Advocate. The decision and Award of the Sole Arbitrator shall be binding upon the parties hereto.

16) The Petitioner-Developer was initially selected by the Respondent-Society in the year 2013. After securing permission/NOC from the office of the Assistant Registrar on 11 March 2014, the first Development Agreement was executed on 22 June 2015. After re-negotiations between the parties, second Development Agreement has been executed on 22 April 2016.

17) The Society comprises of about 869 units including 826 residential premises, 19 shops and 24 stalls spread over 46 buildings in Wadala at Mumbai. Buildings of the Society are constructed on the municipal land. The buildings of the Society are constructed in the year 1957 and by now period of almost 70 years has now elapsed. It is the case of the Respondent-Society that buildings have become old and dilapidated and it is dangerous to reside in the same. However, despite initiation of process of redevelopment in the year 2013, the redevelopment project is yet to kick start despite passage of 13 long years.

18) It appears that the Society had initially terminated the appointment of the Petitioner-Developer by adopting resolution in SBGM on 15 September 2023. However, by letter dated 6 April 2024 it was communicated to the Petitioner that the Committee members had taken a decision to withdraw the termination and to go ahead with the Petitioner as the developer for execution of the project jointly with JSW group. It is contention of the Society that decision of withdrawal of termination was taken by the Managing Committee unsupported by the decision of the General Body of the Society. It appears that the Managing Committee also wrote to Divisional Joint Registrar on 8 April 2024 communicating the decision to withdraw the termination notice. On 10

April 2024, the Society wrote to the Petitioner and apparently sought better terms and conditions as detailed therein. The Society requested the Petitioner to execute a registered Deed of Confirmation-cum-Supplemental Agreement by incorporating the fresh demands of the society's members. It appears that the Petitioner issued a detailed letter dated 27 May 2024 to the Society requesting the Society to complete all formalities for smooth redevelopment of the project. On 18 June 2024, the Society wrote to the Assistant Registrar of Co-operative Societies confirming that it had not appointed any new Developer and was going ahead with the project with the Petitioner.

19) It appears that nothing happened during next 3 ½ months. On 30 September 2024, the Society conducted its 12th Annual General Body Meeting, in which the issue of redevelopment project through the Petitioner was taken up as a last-minute subject and the Society adopted resolution to terminate the appointment of the Petitioner by withdrawing the opportunity given to it vide letter dated 6 April 2024. The Society also resolved to withdraw letter dated 8 April 2024 issued to the Divisional Joint Registrar.

20) Copy of minutes of SBGM held on 30 September 2024 is placed on record on behalf of the Society. The Petitioner has not bothered to produce copy of General Body resolution adopted on 30 September 2024 nor there is any disclosure made about the same in the body of the Petition. However, Petitioner's knowledge in respect of the Resolution dated 30 September 2024 can be gathered from the affidavit-in-reply dated 13 September 2025 filed before the Hon'ble Minister by it in which it pleaded as under:

17. ... I say that when Annual General Meeting of the Applicant society took place on 30-09-2024 the partner who was looking after the redevelopment project of the Applicant Society was hospitalized.

21) The reply was filed after noticing following averments in the Revision Application filed by the Society:

N. It is pertinent to note that even after giving these assurances, the Developer, M/s. Pioneer Constructions, failed to act upon them and despite of another chance given to the Developer, no interest was shown by him and as result, On 30.09.2024, in the duly convened A.G.M, the members reaffirmed by majority vote that the Developer, M/s.Pioneer Constructions' termination is to be held valid and decided to withdraw the letters dated 06.04.2024 and 08.04.2024 addressed to the Respondent No.1 and The Developer. The Appellate craves leave to refer to an reply upon as and when produced the copy of the Minutes of Meeting of the A.G.M. held on 30.09.2024.

The Petitioner has thus suppressed the position that General Body of the Respondent-Society had adopted resolution to terminate the Petitioner's appointment vide AGM held on 30 September 2024.

22) The Society relies on letter dated 4 February 2025 addressed to the Petitioner by which decision taken in the AGM dated 30 September 2024 was allegedly communicated to it. The Petitioner stoutly denies having received letter dated 4 February 2025. At this juncture, I do not propose enter into this factual controversy.

23) Though Petitioner's appointment was terminated by the society on 30 September 2024, it wrote to the Divisional Joint Registrar on 24 March 2025 for issuance of revised NOC on the basis of withdrawal letter dated 6 April 2024. Thus Petitioner did not disclose its termination and relied on withdrawn letter dated 6 April 2024. Acting on Petitioner's

letter dated 24 March 2025 the Divisional Joint Registrar proceeded to issue NOC on 1 April 2025 to the Petitioner. The Society challenged NOC dated 1 April 2025 by filing Revision Application No.355 of 2025 before the Hon'ble Minister. Petitioner participated in the hearing conducted before the Hon'ble Minister by filing affidavit-in-reply. The Hon'ble Minister has proceeded to decide validity of the NOC dated 1 April 2025 issued by the Divisional Joint Registrar. The Hon'ble Minister took note of the fact that though the Petitioner was appointed vide AGM dated 1 September 2013, the redevelopment project had not kick started in absence of any stay order by any authority/court. The Hon'ble Minister took note of the decision taken in AGM held on 15 September 2023 terminating the appointment of the Petitioner. The order observes that though an opportunity was granted to the Petitioner vide letter dated 8 April 2024, it did not take any concrete steps and accordingly resolution was passed in AGM dated 30 September 2024 terminating its appointment. Hon'ble Minister noted that the resolutions adopted in AGM dated 15 September 2023 and 30 September 2024 were not questioned before any court and had attained finality. On the basis of above broad reasonings, the Hon'ble Minister has set aside the NOC issued by the Divisional Joint Registrar on 1 April 2025.

24) The order passed by the Hon'ble Minister on 17 December 2025 has not been challenged by the Petitioner despite passage of four long months. More importantly, while the Petitioner has conveniently relied upon Divisional Joint Registrar's NOC dated 1 April 2025 in the Petition, it has suppressed copy of Minister's order dated 17 December 2025. This Court does not appreciate the conduct of the Petitioner in relying on NOC dated 1 April 2025 by not producing copy of the Hon'ble Minister's

Order, which has set aside the said NOC. Instead of producing copy of the Order dated 17 December 2025, Petitioner has referred to the same in paragraph 30 of the Petition by making a bald averment that the order is a nullity and grants relief beyond the scope of revision and was issued without jurisdiction. Though it is contended that the Petitioner is in the process of filing appropriate proceedings against order dated 17 December 2025, the fact remains that the said order is not challenged despite passage of four long months. This prima facie depicts level of interest of the Petitioner in the project.

25) The position that emerges is that the Society has adopted resolution in the AGM dated 30 September 2024 terminating the Petitioner's appointment. The NOC granted in favour of the Petitioner by the Divisional Joint Registrar on 1 April 2025 is set aside by the Hon'ble Minister by order dated 17 December 2025. Thus, there is no NOC in favour of the Petitioner for carrying out redevelopment project.

26) The conspectus of the above discussion is that the Petitioner has thus delayed implementation of redevelopment during last 13 long years. I am not inclined to accept the submission made on behalf of the Petitioner that it could do nothing in absence of consent letters by 70% members. It is contended on behalf of the Respondent-Society that the pretext of absence of 70% individual consents is raised for the first time in the present Petition and that the same was not cited as a reason before the Hon'ble Minister for explaining delay. Perusal of the reply filed before the Hon'ble Minister indicates that absence of consent letters by 70% members was not pleaded as a justification for not taking any steps in the redevelopment project. On the contrary, the Petitioner

has sought to justify delay in implementation of redevelopment project by contending that proposal to the Planning Authority was not submitted on account of possible changes in redevelopment laws due to advent of DCPR 2034. This is clear from following pleadings in paragraphs 12 and 15 of the Petition:

12. The Petitioner submits that during the period 2015 to 2018 the sanction of scheme of redevelopment was withheld by the planning authority due to New Development Control Regulations were under process of sanctioning. The Development Control and Promotion Regulation 2034 came into effect in the year 2018 and process of sanctioning by the planning authority had commenced in the year 2019....

15. The Petitioner submits that despite the Respondent knowing the facts that the Petitioner was prevented to proceed further with the redevelopment due to change in redevelopment law, various litigations filed by the members and occurrence of COVID-19, the Respondent issued three letters dated 3rd December 2021, 11 March 2022 and 13th April 2022 inter alia calling upon the Petitioner to submit the explanation for delay in redevelopment of the said Property....

27) Petitioner has relied upon letter of the Society dated 6 April 2024 by which termination effected in AGM dated 15 September 2023 was withdrawn. The Society has actually questioned the authority of the Managing Committee in withdrawing termination in absence of General Body Resolution. However, this aspect can be gone into while deciding the rival claims of the parties finally. As of now I proceed on a footing that Petitioner's termination was indeed withdrawn by the Society on 6 April 2024. The Petitioner has relied upon judgment of the Apex Court in ***All India Power Engineer Federation*** (supra) in support of its contention that letter dated 6 April 2024 constitutes waiver of allegation in respect of past delay. As of now, I am unable to accept the contention of waiver of objection of delay. The issue may be relevant while deciding the

claims of the Petitioner finally. However, for deciding the issue of interim measures, this Court cannot ignore the fact that the Petitioner has done absolutely nothing in respect of the project for the last 13 long years.

28) Petitioner's reliance on the provisions of Sections 51 and 52 of the Indian Contract Act, 1872 also does not provide much assistance to it for deciding the issue of making interim measures. The Petitioner has not written a single communication to the Society that in absence of consent letters of 70% members, it was unable to submit proposal to the Municipal Corporation for securing permissions. It appears that even tentative plans for construction were not prepared by the Petitioner nor shared with the Society at any point of time. At least after withdrawal of termination on 6 April 2024, the Petitioner ought to have written to the Society that it was awaiting the consent letters from 70% members and was prevented from taking steps in the redevelopment project. As a matter of fact, the stand of absence of consent letters coming in the way of taking steps in the project appears to be contrary to the position taken by the Petitioner in its affidavit-in-reply filed before the Hon'ble Minister, in which it gave following justification for doing nothing after withdrawal of termination on 6 April 2024:

17. ... I say that as disclosed hereinabove I am a partner of the Respondent No.3. I say that I was looking after the redevelopment project of the Applicant society. I say that on account of ill-health, I was required to be hospitalized for 25 days for undertaking heart valve replacement operation alongwith an open heart surgery and was advised to take complete bed rest for 6 months i.e. till March 2025.I say that when Annual General Meeting of the Applicant society took place on 30-09-2024 the partner who was looking after the redevelopment project of the Applicant Society was hospitalized.

29) Thus, the Petitioner gave the pretext of ill health of one of its partners for six months for doing nothing post withdrawal of

termination on 6 April 2024. It has now turned around and sought to raise a new pretext of absence of consent of 70% members for not taking any steps in redevelopment project. In that view of the matter, it is not possible to make any interim measures in favour of the Petitioner by relying on Clauses 4 and 5 of the Development Agreement. *Prima facie*, the case does not involve failure to perform reciprocal promise by the society.

30) There is gross delay on the part of the Petitioner in not applying for interim measures. The Petitioner's appointment is terminated on 30 September 2024. Even if it is accepted *arguendo* that it did not receive letter dated 4 February 2025, it was served with Revision Application No.355 of 2025, which was filed by the Society on or about 28 May 2025. Though the Revision Application, the Petitioner acquired knowledge of termination of its appointment vide SGBM resolution dated 30 September 2024. While filing affidavit-in-reply dated 13 September 2025, the Petitioner referred to appointment of a new Developer by the Society in paragraph 17 of the reply, which means that it had knowledge about appointment of a new developer by the Society. Alongwith the present Petition, the Petitioner has produced copy of notice dated 25 December 2025 convening SGBM on 10 January 2026 for the purpose of discussing proposals received by the Society in SGBM held on 3 March 2025 for appointment of a new developer. The Petitioner sent advocate notice dated 9 January 2026 objecting to holding of SGBM on 10 January 2026. However, at that stage, the Petitioner did not take steps for seeking interim measures by filing Section 9 Petition. He let conduct of SGBM on 10 January 2026 in which the Society considered proposals of various developers and decided to appoint M/s. Sugee Developers (Sugee Avenue

Private Limited) for implementation of the Society's redevelopment project. The present Petition is filed on 18 April 2026 only after issuance of Notice dated 9 April 2026 for conduct of further SGBM for finalisation of draft Development Agreement with the new Developer. The Petition is moved one day before holding of SGBM on 23 April 2026. The Petitioner has thus not approached this Court with necessary alacrity despite having sufficient notice of appointment of new developer.

31) It is sought to be contended on behalf of the Petitioner that in absence of termination clause in the Development Agreement it is impermissible for the Society to terminate the same, and reliance is placed on judgment of the Apex Court in ***K.S. Majunath*** (supra). The judgment in ***K.S. Majunath*** is in the context of termination of Agreement for Sale of immovable property and it is held that unilateral termination of Agreement for Sale is impermissible except in cases where agreement itself is determinable in nature in terms of Section 34 of the Specific Relief Act, 1963. The Apex Court has held that a party having valid reason for termination of non-determinable Agreement for Sale needs to approach the Court and obtain declaration as to the validity of such termination /rescission and it is not necessary for non-terminating party to do so. In my *prima facie* view the judgment would have no application to the facts of the present case, which relates to termination of appointment of a Developer. Rights of a developer do not stand on same pedestal as that of purchaser of property under the Agreement for Sale. When Developer fails to complete redevelopment project or delays it indefinitely, I do not see any difficulty why the society cannot terminate the Development Agreement and get the redevelopment project implemented through another developer. In a redevelopment project,

though a right is created in favour of the Developer to sell flats in sale component portion, he does not become owner of the land in question, nor the Development Agreement is intended to confer any ownership in the land taken up for development. The right of the developer to sell flats in sale component portion fructifies only after he completes obligation under the Development Agreement to put society members in possession of PAAs. The Developer, who fails to construct the building and put members in possession of PAAs does not hold any title even in respect of sale component flats. Reference in this regard can be made to the following observations in the Judgment of this Court in ***SSD Escatics Pvt. Ltd Vs. Goregaon Pearl Housing Society Ltd.***³:

In my view, a clause in the redevelopment agreement for denial of damages or compensation to the developer can be enforced in law because of the peculiarity of the contract. **In a redevelopment agreement, the developer undertakes the responsibility of rehousing the society members by demolishing the old building and by constructing a new one. In return, the developer secures right to sell the additional constructed units to recoup the expenditure and to earn profits. He has the responsibility of paying transit rent to the society members in the interregnum. Developer in an agreement for redevelopment does not secure ownership in the land and the Society continues to remain the owner. He has the primary responsibility of providing new houses to the members. His right to earn profits in the project crystallizes only after he fulfills the obligations of paying transit rent and putting back the society members in possession of reconstructed flats. If the developer fails to perform the primary obligations, his right to earn profits by selling the flats remains imperfect. Therefore once the developer commits breach of obligation to provide constructed flats/units to the society members and once the DA is terminated on that count, the right of the developer to earn profits from the project continues to remain imperfect.** In absence of right to make profits in the project, the developer cannot seek damages/compensation from the society. This is a reason why if the developer agrees not to claim compensation or damages in the event of termination of contract by the Society due to his defaults, such contractual clause would be enforceable in law.

(emphasis added)

In view of fundamental difference in the contract of redevelopment and Agreement for Sale, the ratio of judgment of the Apex Court in ***K.S. Majunath*** would have no application to the present case.

32) The members of the Society are languishing in old and dilapidated buildings constructed in the year 1957. What is at stake for the members of the Society is far superior right to reside in safer and better homes as compared to right of the Petitioner-Developer to earn profits out of redevelopment project. Beyond paying the amount of Rs.1 crores towards earnest money deposit, the Petitioner has apparently not incurred any expenditure in the project. It has not taken any steps in the project during last 13 long years. He has not moved even a single brick. *Prima facie* it appears that the project is being used by the Petitioner only as a business venture with no intention of even commencing the project. The fact that Petitioner has negotiated with other developers (India Realtech Corporation LLP and JSW Group) indicates possible incapability on the part of the Petitioner to complete the project.

33) Thus when rights of the society members to reside in safer and better homes is pitted against the right of the developer to make profits in the project, the former must prevail over the latter. In ***Huges Real Estate Developers LLP and Khernagar Adarsh Co-operative Housing Society Limited***,⁴ the Division Bench of this Court has recognised this principle and has held in paragraphs 31 and 33 of the judgment as under:

31) Unlike suits involving specific performance of other contracts, the contracts dealing with redevelopment of old buildings of housing societies involve special circumstance where the condition of the old

4 Commercial Appeal No.45 of 2025 decided on 19 August 2025

building gets deteriorated with passage of each day. Redevelopment of buildings is undertaken by societies mostly because the buildings are in bad shape and need to be pulled down. Therefore timely completion of reconstruction assumes importance. Therefore, while considering the issue of grant of temporary injunction to restrain a housing society from proceeding ahead with reconstruction of its building, this vital aspect needs to be borne in mind.

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33) After all a developer is engaged by housing societies on account of lack of expertise and wherewithal for undertaking reconstruction of their buildings. If societies possess the financial capability to undertake reconstruction of their buildings, they can engage a contractor to reconstruct the building and such construction contract would be incapable of being specifically performed. However, because of lack of expertise and financial capabilities of housing societies, development rights are granted in favour of a developer which envisage sale of some units in the reconstructed building and enables the developer not only to recover the cost of demolition of old building and construction of new building but also earn his profits through the project. This is how a developer, who is engaged essentially to reconstruct society's building, also secures some rights in the redevelopment process. On account of creation of this limited interest in the property, the Development Agreements can be specifically performed. However, what must be borne in mind is the fundamental principle that the rights of a developer to earn profits through redevelopment contracts would always remain subservient to the rights of the society to have its building reconstructed. Therefore, when it comes to deciding the prayer for temporary injunction, the Court's approach should normally be avoidance of halting of the redevelopment process in cases where it is possible to secure the rights of the developer at least to some extent. The ultimate interest of the developer in undertaking redevelopment project is to earn profits. When rights of residents of dilapidated buildings to reside in safe houses is pitted against the rights of the developer to earn profits through redevelopment contracts, the latter must yield to the former at least when it comes to consideration of grant of temporary injunction. This is because developer's loss of opportunity to earn profits can always be made good by awarding monetary decree in his favour. However, if redevelopment project of buildings is halted till decision of suit filed by the developer, the loss caused to the residents of the building cannot be undone. This is particularly true where the old buildings are not in habitable condition. Therefore prima facie inquiry in such cases would ordinarily revolve around the issue as to who is guilty of breach of Development Agreement so as to put the guilty party to terms. Thus, if the society members are prima facie found to have terminated the Development Agreement in an illegal manner, the Court can put the society to terms before allowing the

redevelopment process to progress further through another developer.

34) The principle is reiterated by this Court in *Ison Builders LLP V/s. Om Sai Ram Co-operative Housing society (proposed) and others.*⁵ in which this Court, by following the ratio of the judgments in *Huges Real Estate Developers LLP, Borivali Anamika Niwas CHSL Versus. Aditya Developers & Ors*⁶, *Rajawadi Arundaya CHSL Versus. Value Project Pvt. Ltd.*⁷ and *Swashray CHSL vs. Swashray Co- operative Society Housing Society Limited and Others Versus. Shanti Enterprises*⁸ has held in paragraphs 37 and 38 of the judgment as under:

37) In my view, the principles discussed in Huges Real Estate Developers LLP by the Division Bench would apply squarely to the present case where the members of the Society are deprived of permanent alternate accommodations and are languishing in 75-year-old structures and are eagerly awaiting redevelopment of the land. Petitioner's interest in the project are limited to earning profits. Petitioner can claim damages against the Society and members if it can prove that the termination is invalid. However, whether the Petitioner can further stall the process of redevelopment till adjudication of its claims in respect of the termination? The answer to the question appears, to my mind, to be in the negative. Sufficient opportunities have been given to the Petitioner both by the Society, as well as by MCGM to make progress in the project. The case does not involve a circumstance where construction of the building has commenced and certain difficulties have prevented the Petitioner-Developer from completing the Project. The present case involves a situation where even existing structures are yet to be demolished. The status quo at the land prevails for the last 12 long years. It is therefore appropriate that the Society and MCGM are permitted to proceed with development on the land through another developer chosen by the Society and it is not necessary to stall the process till Petitioner gets its claims relating to termination adjudicated.

5 Commercial Arbitration Petition (L) No.36533 of 2025 decided on 23 January 2026

6 2019 SCC Online Bom. 10718

7 2021 SCC Online Bom. 9572

8 CARBP (L) 10432 of 2023 decided on 3 November 2023

38) A Single Judge of this Court in *Swashray CHSL* (supra) has also taken note of cases where members of Societies suffer due to gross delay in the redevelopment process. This Court referred to judgments of this Court in *Borivali Anamika Niwas CHSL Versus. Aditya Developers & Ors.* and *Rajawadi Arundaya CHSL Versus. Value Project Pvt. Ltd.* and has held in para-32 of the judgment as under:

32. Thus, the Petitioner – Society has clearly made out a strong prima facie case in its favour as regards termination of the development agreement and the necessity to take steps for working out the redevelopment project through other means. There is sufficient material on record to show that the Petitioner – Society has completely lost faith and trust in the Respondent – Developer about completion of the redevelopment project. The Petitioner – Society is not expected to be at the mercy of the Respondent – Developer. The Petitioner – Society cannot be shackled with a Development Agreement in which the Respondent – Developer indulges in repeated defaults, without any hope of the redevelopment project actually being completed. The members of the Petitioner – Society have been out of possession since the year 2017 and none of the timelines specified in the Development Agreement or the Supplementary Development Agreement or even PAAAs have been honored by the Respondent – Developer. There is nothing to show that the Petitioner – Society in any manner obstructed the Respondent – Developer in executing the project. Thus, the factual position in the present case is akin to cases in which this Court while exercising power under Section 9 of the said Act has granted directions that amount to mandatory injunctions at interim stage. The position of law expounded and confirmed by this Court repeatedly in the aforementioned judgments, inures to the benefit of the Petitioner – Society in the present case. Therefore, a clear case is made out by the Petitioner – Society for granting reliefs as claimed in its petition filed under Section 9 of the said Act. For the same reasons, the reliefs sought by the Respondent – Developer deserve to be rejected. This Court is of the opinion that holding otherwise would grant a premium to a defaulting developer like the Respondent before this Court and the Petitioner – Society and its members would continue to suffer for no fault on their part. Even today the Respondent – Developer is liable to pay monetary benefits to the members of the Petitioner – Society under the documents executed between the parties. The Respondent – Developer was not forthcoming at any stage during pendency of the present petitions about making good such payments to the members of the Petitioner – Society.

35) In my view, therefore, if the stakes of the rival parties are weighed, it is clear that the stakes of the society members in respect of redevelopment project are way higher than as compared to the one for the Petitioner. If the interim measures are granted in Petitioner's favour, the same would result in redevelopment project being delayed indefinitely. This would endanger the lives of the 826 members, who are residing in the buildings constructed in the year 1957. The members are waiting for safer, bigger and better homes for the last 13 long years and their wait cannot continue indefinitely. On the other hand, if interim measures are refused, the Petitioner may only lose opportunity of earning profits in the project. In case, Petitioner succeeds in its claims, it can be adequately compensated while passing the arbitral Award.

36) The project also appears to be of substantially large magnitude as the same is being executed on land admeasuring 40,520.18 sq. mtrs. comprising of 46 buildings with 826 residential premises, 19 shops and 24 stalls in 46 buildings. In my view, therefore, it would not be appropriate to make interim measures in favour of the Petitioner. All the three parameters of *prima facie* case, irreparable loss, balance of convenience are against the Petitioner and in favour of the Respondent - Society. In my view therefore, no case is made out for grant of interim measures in favour of the Petitioner before commencement of the arbitral proceedings.

37) So far as the Application filed under Section 11 of the Arbitration Act is concerned, Mr. Chavan has fairly not disputed arbitration agreement between the parties. Clause 31 of the Development Agreement provides for appointment of the named Arbitrator. However,

both the learned counsel appearing for the parties, on instructions, have made a statement that this Court can appoint any other fit person to act as a sole Arbitrator for adjudication of disputes and differences between the parties.

38) I accordingly proceed to pass the following order:

(i) Commercial Arbitration Petition (L) No.13956 of 2026 filed under Section 9 of the Arbitration Act is disposed of without granting any relief in favour of the Petitioner.

(ii) Mr. Amrut Joshi, an Advocate practising in this Court is appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Development Agreement dated 22 June 2015 as amended vide fresh Development Agreement dated 22 April 2016. The contact details of the Arbitrator are as under:-

Office :- Office No.12, Darya Building, 2nd
Address Floor, Above Aarti Book Store,
Hutatma Chowk, Fort, Mumbai-400
001

Email id :- amorjos@gmail.com
contact No. :- 9004200707

(iii) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(iv) 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 parties within a period of 2 weeks from receipt of a copy of this order.

- (v) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.
- (vi) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

39) With the above directions, both Section 9 Petition as well as Section 11 Application are disposed of without making any order as to costs.

[SANDEEP V. MARNE, J.]

40) After the judgment is pronounced, the learned counsel appearing for the Petitioner prays for continuation of arrangement made vide order dated 22 April 2026 for a period of one week. The request is opposed by the learned counsel appearing for the Respondent-Society. Considering the nature of findings recorded in the judgment, I am not inclined to continue the interim order any further. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]