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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY CIVIL JURISDICTION

ARBITRATION APPLICATION (L) NO.27816 OF 2026

1. Shree Satguru Developers
2. Umesh Pravinchandra Bhatt
3. Mohd. Zahid Abdul Samad Mukhi ... Applicants

Vs.

1. Chandrashekhar Champalal Hingarh
2. Geeta Construction Company
3. Puranchandra Harendra Kanani
4. Geeta Kanani
5. Tenants Association of Mangla Bhuvan
6. Arvind Jayanti Ajugia
7. Jayanti G. Ajugia ... Respondents

Mr. Dinyar Madon, Senior Advocate with Mr. Aadil Parsurampuria, Ms. Kejeshri Thakkar, and Mr. Aaman Jhaveti i/by Mr. Prashant Parsurampuria for the Applicants.

Mr. Aspi Chinoy, Senior Advocate with Ms. Sutapa Saha for Respondent No.1.

Mr. Karl Tamboly i/by Mr. Ketan Dhavle for Respondent Nos.3 and 4.

Mr. Yash Tiwari for Respondent No.5.

Ms. Pooja Yadav i/by Komal Punjabi for Respondent Nos.8 and 9.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 2, 2026.

PRONOUNCED ON : SEPTEMBER 7, 2026

JUDGMENT:

1. The present Application has been filed by the Applicants seeking appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. The Applicants seek to refer the disputes which have arisen between the Applicants and the Respondents to arbitration. These disputes arise out of the registered Development Agreement dated 12 November 2007.

2. The facts and circumstances which have led to filing of the present Application, as stated by the Applicants, are as follows. The Applicants are the developers appointed by Respondent Nos.2 to 4, who are the owners of the land. Respondent No.1 is the subsequent assignee and the fourth entrant in the matter. According to the Applicants, the ownership rights in the land have recently been assigned by Respondent Nos.2 to 4 in favour of Respondent No.1. According to the Applicants, the earlier developers appointed by the owners had failed to develop the land. Therefore, an Assignment of Development Rights was executed and registered on 12 November 2007. By this document, Respondent No.2, with Respondent Nos.3 and 4 as confirming parties, assigned the development rights in respect of the subject land in favour of the Applicants. An Irrevocable Power of Attorney was executed in favour of the Applicants. Under Clause 3(xiii), the Applicants had agreed to provide an area of 1,286 square feet in the new building to Respondent No.2 as consideration. Under Clause 5, the consideration payable to the owners was fixed at Rs.5.5 Crore. Out of this amount, Rs.2.25 Crore had already been paid and the remaining amount was payable in stages. According to the Applicants, a total amount of Rs.5.21 Crore has been paid by them to the owners. Clause 6 provided for execution of Permanent Alternate Accommodation Agreements with the tenants. Respondent No.2 was required, at his own cost, to assist and co-operate with the Applicants for execution of such agreements. Clause 7 required negotiations with the tenants, and Respondent Nos.2 to 4 were required to assist the Applicants in getting the tenants to vacate the premises. Clause 39 contained the Arbitration Agreement. On 11 April 2008, the Applicants submitted the building plans and obtained the IOD. Since the tenants were not willing to vacate their premises, Respondent No.4 addressed letters to the MCGM on 25 March 2008. According to the Applicants, they proceeded on their own and without receiving any assistance from Respondent Nos.3 and 4. The Applicants entered into Permanent Alternate Accommodation Agreements with Respondent Nos.3 and 4 in respect of their respective units. The Applicants entered into such agreements with 10 tenants in respect of the new premises on 30 November 2010.

3. Between January 2012 and June 2014, fungible FSI was introduced under the DCR 1991. On account of the availability of larger areas, the tenants raised further demands and sought to re-negotiate the terms of their rehabilitation. According to the Applicants, this created difficulties in carrying out the redevelopment of the Petition Property. Discussions and negotiations continued up to 2014. The Applicants state that during this period Respondent Nos.3 and 4 did not provide any assistance. There were restrictions on the use of TDR on plots in the JVPD Scheme during these two years, which caused further difficulties in the redevelopment. After negotiations with the tenants, the Applicants submitted revised plans on 28 November 2014 and obtained a revised IOD from the MCGM. By January 2015, according to the Applicants, they had paid a total amount of Rs.5,21,50,000/- to Respondent Nos.2 to 4. On 20 August 2015, the Applicants came to know that Respondent Nos.3 and 4 had entered into a "Memorandum of Agreed Terms" with M/s Converge Realtors. Under the said arrangement, development rights in respect of the subject land were proposed to be given to M/s Converge Realtors. Clause 6.2 of the said arrangement provided that the arrangement was subject to M/s Converge Realtors settling the matter with the Applicants. M/s Converge Realtors filed Suit No.1207 of 2016 before the City Civil Court at Dindoshi against Respondent Nos.3 and 4 seeking performance of the MOAT.

4. Thereafter, the Applicants were served with a notice dated 18 December 2015 issued by Respondent Nos.3 and 4 terminating the Assignment of Development Rights. According to the Applicants, the termination was made only to enable Respondent Nos.3 and 4 to proceed with their arrangement with M/s Converge Realtors and to obtain further monetary benefit. The Applicants replied to the termination notice on 16 January 2016. In the reply, the Applicants stated that the alleged delay was not caused by them. According to the Applicants, the delay was due to various issues and restrictions, and it was Respondent Nos.3 and 4 who had failed to perform their obligations. The Applicants tried to resolve the dispute with Respondent Nos.3 and 4. On 8 March

2017, the Applicants requested Respondent Nos.3 and 4 to recall the termination notice. During the discussions and meetings which followed, Respondent Nos.3 and 4 required the Applicants to pay further money to show their bona fides. The Applicants agreed to the same. Respondent Nos.3 and 4 accepted a payment of Rs.10,00,000/- from Applicant No.1 by cheque. After the DCPR 2034 was notified in June 2018, Respondent Nos.3 and 4 again sought to re-negotiate the commercial terms with the Applicants. The Applicants did not agree to the proposed changes. Since the old building was in a ruinous condition, Respondent No.6 was proposing to demolish the building. For this purpose, Respondent No.6 issued a notice dated 25 November 2019 under Section 353(B) of the MMC Act, 1888. In March 2020, the Covid-19 pandemic affected the country. Because of the lockdown imposed during that period, the Applicants were prevented from carrying out development activities, though according to them this was not by their choice. Pursuant to the notice under Section 353B, the Applicants, by their letter dated 28 June 2021, submitted the report of their structural engineer, M/s Frames Consulting Civil Structural Engineers, to Respondent Nos.8 and 9. According to Applicant No.1, notices were sent on 23 July 2021 and 14 January 2022 to the MCGM informing it about the termination of the Applicants' Development Agreement. Hearings were held before the TAC of the MCGM on 30 November 2021. The hearing was attended by the Applicants' structural engineer, who appeared on behalf of the owners, and the structural engineer representing the tenants. The TAC submitted its report on 13 December 2021. The building was classified in C-1 category and was directed to be vacated immediately. The MCGM implemented the said decision in January 2022. At the same time, the Applicants proceeded with obtaining further permissions for the new building proposed by them in accordance with the DCPR 2034. The following permissions were obtained: (i) On 20 September 2021, NOC from the Civil Aviation Department; (ii) On 30 September 2021, Chief Fire NOC; (iii) On 31 December 2021, concessions from the MC; (iv) On 27 January 2022, revised IOD; and (v) On 13 February 2023, AAI NOC.

5. The tenants of the old building filed Commercial Suit (L) No.29492 of 2023 before this Court on 14 September 2022. The Applicants, Respondent Nos.3 and 4 and others were made parties to the said proceedings. The tenants, amongst other reliefs, sought performance of the Permanent Alternate Accommodation Agreements executed with them in the year 2011. The dispute with the tenants was settled, and consent terms were executed. On 13 August 2024, Respondent Nos.2 to 4 executed a Deed of Assignment in favour of Respondent No.1. By the said Deed, according to the Applicants, all rights in the Petition Property were assigned to Respondent No.1. The Applicants further state that from the Auto DCR website it appears that Respondent No.1 submitted a proposal for redevelopment of the Petition Property in October 2025. However, the said proposal has not been approved because of the subsisting rights claimed by the Applicants. The Applicants issued a notice dated 30 April 2026 invoking arbitration against the Respondents in respect of the disputes arising under

Clause 39 of the Assignment Deed. Respondent No.1 replied to the said notice on 7 May 2026. Respondent No.1, amongst other things, denied that there was any Arbitration Agreement between the Applicants and Respondent No.1. Respondent Nos.2 to 4 replied to the notice on 13 May 2026. They stated that their appointment had already been terminated and that the Applicants' claim was barred by limitation. In these circumstances, the Applicants have filed the present Arbitration Application seeking appointment of an Arbitrator.

6. Mr. Madon, learned Senior Advocate appearing for the Applicants, relied upon the judgment of the Supreme Court in *SBI General Insurance Company Limited vs. Krish Spinning,* (2024) 12 SCC 1. He submitted that the question of limitation can be considered by the Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996. He further submitted that Respondent No.1, being the assignee of Respondent Nos.3 and 4, is covered by the arbitration clause contained in the Development Agreement.

7. Mr. Chinoy, learned Senior Advocate appearing for Respondent No.1, submitted that Respondent No.1 has no contract with the Applicants and, in particular, has no Development Agreement with them. According to him, the alleged Development Agreement creates personal rights and obligations between the persons who executed it. Those rights do not go with the land. Therefore, according to Respondent No.1, the Applicants cannot claim any rights under the Development Agreement against this Respondent. He further submitted that the MOAT contemplated a separate arbitration agreement between the parties, but the MOAT never became a concluded contract. He submitted that on 13 August 2024, Respondent No.1 acquired the leasehold rights from Respondent Nos.3 and 4 by executing an Indenture of Assignment of lease or leasehold rights in its favour. After the said assignment, Respondent No.1 became the sole and exclusive holder of the leasehold rights in the said property. According to Respondent No.1, this was done with the full knowledge and consent of the Applicants and/or Applicant No.2, who acted through its partner.

8. Mr. Chinoy further submitted that the Development Agreement had already been terminated in 2016 and that the Applicants did not challenge the termination within time. According to him, the Applicants allowed the termination to become final. Respondent Nos.3 and 4 have consistently asserted that the Development Agreement stood terminated, including before the Municipal Corporation. He submitted that any alleged consent terms entered into between the tenants and the Applicants, by which the Applicants were recognised as developers, cannot bind Respondent No.1 or Respondent Nos.3 and 4. According to him, after termination of the Applicants' Development Agreement in March 2016, the Applicants lost all rights to redevelop the property. He further submitted that Respondent No.1 is the assignee only of the leasehold rights in the land and is not the assignee of the Development Agreement. The alleged Development Agreement, even if it is still said to exist, creates personal rights and obligations between the parties to that agreement and such rights do not pass with the land. Respondent No.1 submitted that the Applicants have no rights under the

Development Agreement against Respondent No.1.

REASONS AND FINDINGS:

9. I have considered the submissions made by Mr. Madon, learned Senior Advocate for the Applicants, and Mr. Chinoy, learned Senior Advocate for Respondent No.1. I have considered the Assignment of Development Agreement dated 12 November 2007, particularly Clause 39 containing the arbitration clause.

10. The first question which arises for consideration is regarding the extent of enquiry which this Court can make while considering an application under Section 11 of the Arbitration and Conciliation Act, 1996. At this stage, the Court is not required to conduct a full trial or decide all the disputed questions as if the matter is being finally tried. The Supreme Court, particularly after introduction of Section 11(6-A), has explained the limited nature of the enquiry in *Ajay Madhusudan Patel v. Jyotrindra S. Patel*, (2025) 2 SCC 147.

11. In paragraph 76.2, the Supreme Court has stated:

> "76.2. The insertion of Section 11(6-A) through the 2015 Amendment to the 1996 Act stipulated that the courts under Section 11 shall confine their examination to the "existence" of an arbitration agreement. It legislatively overruled the decisions in SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] by virtue of its non obstante clause."

12. The Supreme Court stated in paragraph 76.3:

> "76.3. Duro Felguera [Duro Felguera, S.A. v. Gangavaram

> Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , in terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists — nothing more, nothing less."

13. Thus, where there is no serious doubt that an arbitration agreement exists between the parties, the Court need not examine the entire dispute at the stage of Section 11. However, a different question arises where a person who did not sign the agreement is sought to be treated as a party to the arbitration agreement. In the present case, Clause 39 is admittedly contained in the Assignment of Development Agreement dated 12 November 2007. The Applicants are described in the said document as the Developers. Respondent Nos.2 to 4 are described as the Owners/Confirming Party. Respondent No.1 was not a party to the said document.

14. Clause 39 reads as follows:

> "39. It is agreed that all the disputes between the parties hereto shall be referred to the three members committee comprising of one member each from the Assignors, the Developers and the Owners/Confirming Party's side. The Convenor of the said committee shall be the member nominated by the Developers, who shall have a casting vote in case of tie and the decision taken by majority members from the said committee shall be final and binding upon the parties. It is hereby agreed that if the said disputes could not be resolved by the said committee, then, in that event, the committee shall refer the said dispute/s to the arbitration of one single arbitrator to be nominated jointly by the parties hereto and the decision taken by such arbitrator so nominated shall be final and binding upon the the parties to the dispute. The Arbitration will be conducted as per the

provisions of the Arbitration & Conciliation Act, 1996.”

15. The wording of Clause 39 starts by referring to disputes “between the parties hereto”. It provides for a three member committee consisting of one member from the Assignors, one from the Developers and one from the Owners/Confirming Party. If the dispute is not resolved by that committee, it is to be referred to one single Arbitrator “to be nominated jointly by the parties hereto”. On a plain reading of this clause, the arbitration agreement is between the parties who entered into the Assignment of Development Agreement. The clause does not say that any person who obtains any right or interest in the property will become a party to the arbitration agreement. Therefore, the arbitration clause cannot merely because it forms part of the Development Agreement be treated as an agreement with every subsequent lessee in the property. There must be some material to show that such person became a party to the agreement or accepted and adopted the arbitration clause.

16. This brings me to the principal submission of Mr. Madon. His submission is that Respondent No.1 is an assignee of Respondent Nos.3 and 4 and, therefore, Respondent No.1 is covered by Clause 39. This submission has some force, but only in a particular situation. If a person is given the rights and obligations of a party by way of assignment, such person may, depending upon the terms of the assignment, become bound by the arbitration agreement forming part of that contract. But the mere fact that a person has acquired some interest in the property which was the subject matter of the Development Agreement does not make that person an assignee of the Development Agreement. In my opinion, a person does not become an "assignee" merely because the title of the Development Agreement contains the word "assignees" or because the agreement refers to certain categories of persons who may be bound by it. The question is whether the lessee has acquired the rights and obligations of a party by assignment, express incorporation or by conduct. The arbitration agreement would form part of such rights and obligations. A lease or sub-lease gives a person a right to occupy or use the property. It does not transfer the Development Agreement or the arbitration clause contained in it.

17. While considering an application under Section 11 of the Arbitration and Conciliation Act, 1996, the Court is required to see whether an arbitration agreement exists and whether the Applicant has connection with that agreement. Therefore, if a lessee seeks to rely upon the arbitration clause, the lessee would have to show privity, a valid assignment or written consent by which the lessee accepted the arbitration clause.

18. The Arbitration and Conciliation Act, 1996 does not define the word "assignee" for this purpose. Therefore, the meaning has to be understood from the Development Agreement, the document under which the lessee claims rights and the other documents forming part of the same transaction. A lessee may be treated as an assignee if the transaction transfers the relevant rights and obligations to the lessee. The position may be different where the lessee accepts the arbitration clause, or where the documents taken together show that there was a novation and the lessee was intended to step into the position of the contracting party. However, merely having a lease, licence, possession arrangement or sub-lease does not have that effect. The word “assignee” has to be understood by reading the entire agreement. The Court has to consider the operative clauses, definitions, restrictions on assignment, provisions relating to lease and the other terms of the Development Agreement. If the word “assignee” is found only in the title or in a recital, and the operative provisions do not extend the rights and obligations to lessees, such reference would not be. A person claiming to be an assignee would have to show something more than possession of the property or some right derived from the property. The material may include an Assignment Deed, consent of the contracting parties, acceptance of the obligations, or conduct which shows that the person became bound by the Development Agreement.

19. In my opinion, a lessee cannot be treated as an “assignee” merely by implication. A lease creates or transfers an interest in the property. An assignment transfers rights and obligations. In a particular transaction both may be found together, but the two expressions do not have the same meaning. The position may be different where the Development Agreement provides that permitted lessees, transferees, successors, or persons claiming through a party would be bound by the arbitration clause. It may be different where the lease incorporates the Development Agreement and the lessee accepts the obligations arising under it. In such circumstances, the lessee may have standing to invoke the arbitration clause and seek appointment of an Arbitrator. If the reference to “assignees” is only in the title or heading of the agreement and there is no definition which includes lessees within that expression, such reference would not be enough to hold that the lessee is an assignee for the purpose of Section 11. Therefore, a lessee does not become an assignee under a Development Agreement. The words “assignee” and “lessee” describe different relationships. They can have the same effect only where the contract or the transaction shows such intention. A reference to assignees in the title of the agreement, without any definition including lessees, would not be sufficient. The case of a lessee becomes stronger where the lease or a subsequent agreement incorporates the Development Agreement and its arbitration clause. The lessee would have to show an assignment, acceptance of the obligations, or and unequivocal conduct adopting the Development Agreement and its arbitration clause.

20. The distinction between assignment of property rights and assignment of rights is important in the present case. Respondent No.1's own case is that it acquired leasehold rights from Respondent Nos.3 and 4 under the Indenture of Assignment dated 13 August 2024. There is no material shown before me by which Respondent No.1 took an assignment of the Development Agreement dated 12 November 2007. There is no document shown by the Applicants by which Respondent No.1 agreed to take upon the obligations of the Developer or the Owners under that agreement. The Applicants rely upon the fact that Respondent No.1 acquired rights in the Petition Property. This fact is not sufficient. Acquisition of an interest in the property and acquisition of rights under the Development Agreement are separate matters.

21. The Applicants have relied upon the subsequent conduct of Respondent No.1 in relation to redevelopment of the property. Even if Respondent No.1 intended to redevelop the property, that fact does not show that Respondent No.1 accepted the Development Agreement dated 12 November 2007 or Clause 39 contained therein. The decision of the Supreme Court in *Cox & Kings Ltd.* requires consideration. The Supreme Court has held that the question whether a non-signatory has become a party to an arbitration agreement may involve factual and legal questions. In *Ajay Madhusudan Patel*, this position has been summarised in paragraph 76.7 as follows:

> "76.7. Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16."

22. Thus, every non-signatory cannot be excluded at the Section 11 stage merely because such person has not signed the agreement. The Court has to see whether there is at least a prima facie basis to hold that the non-signatory has become a party to the arbitration agreement. If such basis is available and the question requires evidence or detailed examination, the matter may be left to the Arbitral Tribunal.

23. In the present case the difficulty for the Applicants is that there is no such prima facie material in respect of Respondent No.1. The document relied upon by Respondent No.1 is an assignment of lease or leasehold rights. The Applicants have not shown any corresponding assignment of the Development Agreement in favour of Respondent No.1. There is no subsequent agreement executed by Respondent No.1 accepting Clause 39. The fact that Respondent No.1 acquired leasehold rights or submitted a proposal for redevelopment cannot amount to an agreement by Respondent No.1 to arbitrate with the Applicants.

24. I have considered the consent terms between the Applicants and the tenants. Those consent terms cannot by themselves create an arbitration agreement between the Applicants and Respondent No.1. Respondent No.1 was not a party to those consent terms. The fact that the tenants recognised the Applicants as developers cannot create privity between the Applicants and Respondent No.1 where such privity does not otherwise exist.

25. The submission that Respondent No.1 had knowledge of the Applicants' development rights does not change the position. Knowledge of the Applicants' claim is different from consent to arbitration. An arbitration agreement is based upon agreement between the parties. A person cannot be made subject to an arbitration clause merely because such person knew about the clause or knew that another person was claiming rights under the contract. The wording of Clause 39 supports this conclusion. It does not state that every future lessee or transferee of the property would be bound by the arbitration clause. It specifically refers to disputes "between the parties hereto". It further provides that the Arbitrator is to be nominated jointly by "the parties hereto". Respondent No.1 was not one of those parties when the Development Agreement was executed.

26. The Applicants have relied upon the fact that the redevelopment proposal submitted by Respondent No.1 was not approved because of the rights claimed by the Applicants. This may show that there is a dispute regarding redevelopment of the property. But existence of a dispute does not create an arbitration agreement between the parties. The submission of Respondent No.1 that it was not a party to the Development Agreement deserves acceptance to this extent. Respondent No.1 did not become a party to the arbitration agreement merely because it acquired leasehold rights in the Petition Property.

27. I now come to the objection of limitation raised by Respondent Nos.2 to 4. Mr. Madon relied upon *Krish Spg.* and submitted that the question of limitation should be left to the Arbitrator under Section 16 of the Act. In my view, there is substance in this submission. At the stage of Section 11, the Court is not required to go into the evidence in detail and finally decide whether every claim made by the Applicants is barred by limitation.

28. The Supreme Court held in *Krish Spg.*:

> "136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in *Arif Azim* [*Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] . As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and to the view taken in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1 : 2023 INSC 1066] ."

29. Therefore, at this stage, I would not examine each claim and give a finding whether the same is barred by limitation. The enquiry of this Court has to remain within the limited scope of Section 11. Whether the claims of the Applicants are within limitation and what effect is to be given to the subsequent correspondence, payment and other events relied upon by the Applicants can be considered by the Arbitral Tribunal. In the present case, the Development Agreement was terminated by Respondent Nos.3 and 4 by notice dated 18 December 2015. The Applicants replied to the said notice on 16 January 2016. Thus, the

Applicants were aware at that time that Respondent Nos.3 and 4 were treating the Development Agreement as terminated. The Applicants state that they tried to resolve the matter with Respondent Nos.3 and 4. According to the Applicants, discussions took place on 8 March 2017. The Applicants further state that Respondent Nos.3 and 4 asked them to make a further payment of Rs.10,00,000/- to show their bona fides and that the said amount was accepted. The Applicants rely upon this circumstance to submit that the matter was being discussed and had not ended in 2016. Whether the payment of Rs.10,00,000/- and the conduct of the parties had any effect upon the rights or limitation will depend upon the documents and the circumstances of the case. In my view, it is not necessary to decide this question at this stage. The same can be considered by the Arbitral Tribunal.

30. It is true that there was a considerable period during which no arbitration proceeding was commenced and no notice invoking Clause 39 was issued. The notice invoking arbitration was issued only on 30 April 2026. However, whether the said delay makes the claims barred by limitation is the objection of Respondent Nos.2 to 4 and the same can be raised before the Arbitral Tribunal and decided in accordance with law. Thus, so far as Respondent Nos.2 to 4 are concerned, the Applicants were aware of the termination and the dispute regarding their rights for several years before the present proceedings. The Applicants rely upon the payment made in 2017 and the discussions as circumstances which, according to them, had an effect upon the relationship between the parties. Whether these circumstances have any legal effect on limitation is not required to be decided by this Court at this stage. The question whether the claims raised by the Applicants are time-barred can be decided by the Arbitral Tribunal in exercise of its jurisdiction under Section 16 of the Act.

31. In the present case, the dates regarding the termination, reply, subsequent discussions, payment and invocation of arbitration are on record. However, merely because there is a long gap between the termination and the invocation of arbitration, it would not be proper for this Court to finally decide the limitation issue when the Applicants rely upon subsequent events and conduct of the parties in support of their case. These matters can be considered by the Arbitral Tribunal along with the other contentions of the parties. I have considered the Deed of Assignment dated 13 August 2024 and whether the same has any bearing upon the rights claimed by the Applicants or upon the question of limitation.

32. In my opinion, whether the said Deed of Assignment and the subsequent conduct of the parties have any effect upon the rights of the Applicants or upon limitation can be considered by the Arbitral Tribunal. At this stage, it is not necessary for this Court to give a final finding as to what effect the said transaction has. The Applicants have relied upon their continued efforts for redevelopment. They have relied upon the permissions obtained from the Municipal Corporation and other authorities, their dealings with the tenants and the consent terms entered into with them. These facts are relied upon by the Applicants to show that they continued to assert their rights under the Development

Agreement. Whether these circumstances have any legal effect upon the subsistence of the Applicants' rights or upon limitation can be considered by the Arbitral Tribunal after considering the material placed before it.

33. Similarly, the notices issued by the Applicants to the MCGM, the TAC proceedings, the C-1 classification of the building, the revised IOD and the other permissions obtained by the Applicants are relied upon by the Applicants in support of their continuing rights. I do not propose to decide at this stage whether these circumstances have any effect upon limitation. The same can be considered by the Arbitral Tribunal in accordance with law. The Applicants have relied upon the subsequent conduct of Respondent Nos.3 and 4 and their dealings with other developers. Such material may have relevance to the allegations made by the Applicants that Respondent Nos.3 and 4 acted contrary to their rights. What effect such conduct has, if any, upon the rights of the Applicants and upon limitation can be examined by the Arbitral Tribunal.

34. So far as Respondent Nos.2 to 4 are concerned, Clause 39 contains an arbitration agreement between the parties. The Applicants have invoked the said arbitration agreement by notice dated 30 April 2026. Respondent Nos.2 to 4 have raised an objection that the claims are barred by limitation. This objection can be raised before the Arbitral Tribunal and considered by the Tribunal in accordance with law.

35. The Applicants have made out a case for appointment of an Arbitrator so far as Respondent Nos.2 to 4 are concerned, since the existence of the arbitration agreement contained in Clause 39 is not in dispute. The objection of limitation raised by Respondent Nos.2 to 4 shall remain open and shall be considered by the Arbitral Tribunal in accordance with law. I have not overlooked the case of the Applicants that they spent substantial amounts on the property, paid Rs.5.21 Crore to the owners, obtained permissions, dealt with the tenants and continued to take steps for redevelopment. These circumstances are relied upon by the Applicants in support of their continuing rights. Whether these circumstances have any effect upon the substantive claims or upon limitation is not being finally decided by this Court and is left to the Arbitral Tribunal.

36. In view of the above, I am of the view that the present Application makes out a case for appointment of an Arbitrator between the Applicants and Respondent Nos.2 to 4. The issue of limitation, including whether any or all of the claims made by the Applicants are barred by limitation, is kept open for determination by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996. However, no case is made out for appointment of an Arbitrator against Respondent No.1, as Respondent No.1 has not been shown to be a party to the arbitration agreement contained in Clause 39 of the Assignment of Development Agreement dated 12 November 2007.

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

i) The Commercial Arbitration Application (L) No.11740 of 2026 is partly allowed;

ii) The disputes between the Applicants and Respondent Nos.2 to 4 arising out of the Assignment of Development Agreement dated 12 November 2007 are referred to arbitration in terms of Clause 39 thereof;

iii) The objection raised by Respondent Nos.2 to 4 regarding limitation is kept open. All questions relating to limitation, including whether any or all of the claims made by the Applicants are barred by limitation, shall be decided by the learned Arbitral Tribunal in accordance with law and in exercise of its jurisdiction under Section 16 of the Arbitration and Conciliation Act, 1996;

iv) Mr. Amrut Joshi, Advocate of this Court, is appointed as the Sole Arbitrator to adjudicate upon the disputes between the Applicants and Respondent Nos.2 to 4 arising out of the Assignment of Development Agreement dated 12 November 2007, subject to the learned Arbitrator making the necessary disclosure under Section 12 of the Arbitration and Conciliation Act, 1996 and there being no circumstances giving rise to justifiable doubts as to his independence or impartiality;

v) The learned Sole Arbitrator shall decide all issues arising between the Applicants and Respondent Nos.2 to 4, including the issue of limitation, in accordance with law;

vi) It is clarified that this Court has not expressed any final opinion on the merits of the claims of the Applicants or on the objection of limitation raised by Respondent Nos.2 to 4;

vii) The Application insofar as it seeks appointment of an Arbitrator against Respondent No.1 is rejected. Respondent No.1 is not shown to be a party to the arbitration agreement contained in Clause 39 of the Assignment of Development Agreement dated 12 November 2007;

viii) The learned Arbitrator shall be at liberty to determine the claims, counterclaims, if any, and all questions of jurisdiction, limitation, and merits in accordance with law;

ix) 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;

x) 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;

xi) 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 two weeks from receipt of a copy of this Order;

xii) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

xiii) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs;

xiv) The Commercial Arbitration Application is disposed of in the above terms.

xv) There shall be no order as to costs.

(AMIT BORKAR, J.)