



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

ARBITRATION APPEAL (L) NO. 20093 OF 2025

IN

ARBITRATION PETITION NO. 175 OF 2025

WITH

INTERIM APPLICATION (L) NO. 20111 OF 2025

Pranav Constructions Limited

....*Petitioner*

: *Versus* :

Priyadarshini Co-operative Housing
Society Limited and others

....*Respondents*

ALONGWITH

ARBITRATION APPEAL (L) NO. 20373 OF 2025

IN

ARBITRATION PETITION NO. 175 OF 2025

WITH

INTERIM APPLICATION (L) NO. 20461 OF 2025

Priyadarshini Co-operative Housing
Society Limited

....*Petitioner*

: *Versus* :

Pranav Constructions Limited and Others

....*Respondents*

Mr. V. R. Dhond, Senior Advocate with Mr. Prathamesh Kamath, Mr. Harsh Behany, Ms. Prachi Sanghavi and Ms. Saloni Manjrekar i/b HN Legal, for Appellant in Arbitration Appeal (L) No. 20093/2025 and for Respondent No. 1 in Arbitration Appeal (L) No. 20373/2025.

Mr. Mayur Khandeparkar with Mr. Mohit Khanna i/b Mr. Yash A. Dhakad, for the Appellant in Arbitration Appeal (L) No. 20373/2025 and for Respondent No.1 in Arbitration Appeal (L) No. 20093/2025.

Mr. Rajiv Narula i/b Jhanagiani Narula & Associates, for Respondent No.2.

Mr. Karl Tamboly i/b Mr. Jamshed Ansari, for Respondent Nos. 3 and 4.

**CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATED : 14 JULY 2025.

JUDGMENT (Per : Sandeep V. Marne, J.) :

1) These Appeals are filed under the provisions of Section 37 of the Arbitration and Conciliation Act, 1996 (**the Act**) challenging the order dated 20 June 2025 passed by the learned Single Judge disposing of Arbitration Petition No. 175/2025 filed under the provisions of Section 9 of the Act without grant of any relief in favour of the Petitioner therein.

2) Priyadarshini Co-operative Housing Society Limited (**Society**) is the owner of land and building situated at Final Plot No.42A of Town Planning Scheme No. II of Santacruz corresponding to CTS No. G/112, G/113 and G/114 admeasuring 1006.40 sq.mtrs (1254.19 sq.mtrs. as per Property Card), Bandra Taluka, Mumbai Suburban District at 112 Swami Vivekanand Road, Mumbai – 400 054 consisting of ground plus three upper floors comprising of 16 residential flats, one bank premises on ground floor and six garages. The Development Agreement dated 12 March 2025 came to be

executed between the Society and Pranav Constructions Limited **(Developer)**, under which development rights for redevelopment of Society's building were granted in favour of the Developer. The Developer obtained Intimation of Disapproval **(IOD)** dated 27 March 2025 from Municipal Corporation of Greater Mumbai **(MCGM)** and thereafter issued notice to vacate dated 28 March 2025 on the Society calling it upon to ensure vacation of all the flats, bank premises and garages within 30 days. By letter dated 7 April 2025, the Society forwarded 20 consent letters by its members informing the Developer that some of the members (*Respondent Nos.2 to 6*) have refused to vacate possession of their respective premises. Respondent No.2 occupies Garage No.6, Respondent Nos. 3 and 4 occupy the bank premises on the ground floor and Respondent Nos. 5 and 6 occupy residential Flat No. 8 on the first floor. The Developer served Advocate's notice dated 8 April 2025 to the Society as well as to Respondent Nos.2 to 6 for execution of consent letters for vacation of possession of their respective premises. Since Respondent Nos.2 to 6 failed to cooperate in the redevelopment process by vacating possession of their respective premises, the Developer filed Arbitration Petition No.175/2025 under the provisions of Section 9 of the Act, *inter-alia*, seeking interim measures of direction against Respondent Nos.2 to 6 for signing and executing consent letters for vacation of the premises in their occupation in terms of the Development Agreement dated 12 March 2025. Alternatively, direction was sought for execution of consent letter either by the Court Receiver or Prothonotary & Senior Master of this Court on behalf of Respondent Nos.2 to 6. This is how Arbitration Petition No. 175/2025 was filed by the Developer for the purpose of ensuring vacation of the premises in occupation of Respondent Nos.2 to 6 for smooth carriage of the redevelopment process.

3) The Arbitration Petition was resisted by Respondent Nos.2 to 6 by filing their respective Affidavits in Reply. After considering the pleadings and the submissions canvassed on behalf of the rival parties, the learned Single Judge proceeded to dispose of the Arbitration Petition No. 175/2025 without grant of any relief in favour of the Developer by judgment and order dated 20 June 2025. The Developer is aggrieved by judgment and order dated 20 June 2025 and has filed Arbitration Petition (L.) No. 20093/2025. The Society is also aggrieved by judgment and order dated 20 June 2025 and has filed Arbitration Appeal (L) No. 20373/2025.

4) Mr. Dhond, the learned Senior Advocate appearing for the Developer would submit that Respondent Nos.2 to 6, in their capacity as members of the Society, are bound by the terms and conditions of the Development Agreement and cannot take stand contrary to the obligations of the Society arising out of the Development Agreement. That the Developer has agreed to offer permanent alternate accommodation to Respondent Nos.2 to 6 in accordance with the decision taken by the General Body of the Society. That even garage occupier is being provided permanent alternate accommodation in lieu of garage premises. That the so called dispute between Respondent Nos.2 to 6 and the Society about entitlement of the members to a particular area in the new building cannot be a subject matter of adjudication in proceedings filed under Section 9 of the Act. He would submit that the issue involved in the Appeal is squarely covered by the judgment of this Court in Ambit Urbanspace Versus. Poddar Apartment Co-operative Housing Society Limited¹.

1 COMMERCIAL ARBITRATION APPEAL (L) NOS. 12585 OF 2025 AND 16482 OF 2025 DECIDED ON 1 JULY 2025.

5) Mr. Khandeparkar, the learned counsel appearing for the Society would adopt the submissions canvassed by Mr. Dhond. Additionally, he would submit that the members of the Society are bound by the covenants of the Development Agreement, which include arbitration clause. He relies on provisions of Section 28(3) of the Act mandating the Arbitral Tribunal to take into account the contract applicable to the transaction and would submit that the alleged grievance of Respondent Nos.2 to 6 of discrimination falls completely outside the agreement between the Developer and the Society. That the said dispute is between the Society and members, which cannot be mixed up with the issue of Society's obligations under the Development Agreement. He would rely on judgment of the Apex Court in Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. Versus. Alok Kumar and another² in support of the contention that Court cannot sit in appeal over commercial wisdom of the Society in striking a bargain with the Developer. Inviting our attention to the judgment of this Court in Calvin Properties and Housing Versus. Green Fields Co-operative Housing Society Limited and others³, he would submit that the individual claims of members of the Society cannot be adjudicated in proceedings under Section 9 of the Act and that the same needs to be adjudicated in separate proceedings.

6) Mr. Narula, the learned counsel appearing for Respondent No.2 (Garage Occupier) would oppose both the Appeals submitting that the Society and the Developer have practiced discrimination amongst residential flat owners and commercial premises owners/garage owners while effecting the redevelopment process. That residential flat owners are being offered additional 39% area over the premises in the old building whereas his client (Respondent No.2) is being granted 20% less

² 2022 SCC OnLine SC 1404

³ 2013 SCC OnLine Bom 1455

area than the area of garage currently in his occupation. That flat owners/members are receiving higher areas in the redeveloped building at the cost of reduction of area of Respondent No.2. That the learned Judge has appreciated this discriminatory treatment meted out to Respondent No.2 and has exercised discretion in not granting any relief to the Developer in arbitration proceedings. He would rely upon judgment of the Apex Court in Wander Ltd. and another Versus. Antox India P. Ltd.⁴ in support of his contention that this Court cannot interfere in the exercise of discretion by the learned Single Judge while refusing to grant interim measures.

7) Mr. Narula would further submit that the decisions of the Society in undertaking redevelopment process are marred by fraud, misrepresentation and suffer from violation of statutory guidelines. He would place reliance on direction dated 4 July 2019 issued under Section 79A of the Maharashtra Co-operative Societies Act, 1960 to demonstrate that the redevelopment process undertaken by the Society suffers from lack of transparency. That the Society had initially decided to go for self development. However, without inviting tenders, the Society has handed over the redevelopment rights to the Developer without offering any choice to the Society members and without discussing the redevelopment benefits with the members. That appreciating the position that the entire redevelopment process is arbitrary and discriminatory, the learned Single Judge has rightly refused to grant any interim measures in favour of the Developer. That 39% of the fungible area made available in respect of garage of Respondent No.2 is being handed over to the residential flat owners resulting in gross reduction in the area of Respondent No.2 in the new building. He would rely upon judgment of this Court in Avenues

4 1990 (SUPP) SCC 727

*Seasons Properties LLP Versus. Nissa Hoosain Nensey & Ors.*⁵ in support of the contention that arbitration agreement can be invoked only against a member who has signed the Development Agreement. He would pray for dismissal of the Appeals.

8) Mr. Tamboly, the learned counsel appearing for Respondent Nos.3 and 4, who are owners of commercial bank premises on the ground floor would submit that his clients are being provided with only 19% additional area as compared to grant of 39% additional area to residential flat owners. Additionally, it is submitted that the premises have already been gifted by Respondent Nos.3 and 4 in favour of son and granddaughter, who were not impleaded as party Respondents to the Arbitration Petition. That Respondent Nos.3 and 4 have challenged Society's Resolution before the Co-operative Court. He would distinguish the judgment of this Court in *Ambit Urbanspace* (supra) contending that when allegations of fraud are involved, rights of members of the Society would not be subservient to the Society's obligations under the Development Agreement. Lastly, Mr. Tamboly would submit that jurisdiction of the Appellate Court under Section 37 of the Act is limited and that the Appellate Court cannot interfere with exercise of discretion by the learned Single Judge merely because another view is plausible. He would pray for dismissal of both the Appeals.

9) Rival contentions of the parties now fall for our consideration.

10) Before proceeding further, it must be noted that brother of Respondent Nos. 5 and 6 (*occupiers of residential Flat No.8*) has appeared

⁵ APPEAL NOS. 42, 43 AND 44 OF 2024 DECIDED ON 22 OCTOBER 2024.

in person and has submitted that Respondent Nos.5 and 6 has agreed to execute the consent letter for vacation of Flat No.8. Thus the dispute is now restricted only in respect of Respondent No.2 (*owner of Garage No.6*) and Respondent Nos. 3 and 4 (*owner of bank premises*). Therefore, the position that obtains today is that out of 16 flats, one bank premises on ground floor and six garages (total 23 premises), owners/occupiers of 21 premises have executed/agreed to execute consent letters for vacation of the premises and are willing to co-operate in the redevelopment process of the Society's building. It is only the owner/occupier of the two premises viz. Garage No.6 and bank premises on ground floor who are opposing the redevelopment process.

11) The learned Single Judge has disposed of Arbitration Petition No. 175/2025 filed under the provisions of Section 9 of the Act without grant of any relief in favour of the Developer. Perusal of the order of the learned Single Judge would indicate that decision of the Society in allotting lesser percentage of additional area to garage and commercial premises owners as compared to residential flat owners is the main reason for non-grant of any relief in favour of the Developer. After noticing that the Society has practiced discrimination by granting only 19% increase to commercial occupants as compared to 39% increase to residential unit owners, the learned Single Judge has refused to exercise discretion in favour of the Developer. Another reason for non-grant of any relief by the learned Single Judge in favour of the Developer is absence of possibility of real arbitration happening between the parties. The learned Judge also took note of pending proceedings in the Co-operative Court between Respondent Nos.3 and 4 and the Society and held that the position of the parties would unalterably vary if any order is passed under Section 9 by the Court.

12) Two broad issues that arises for determination in the present Appeals are as under :-

(i) Whether individual members of a Co-operative Society are bound by the covenants in the Development Agreement executed by the Society with the Developer and whether their individual rights are subservient to the obligations of Co-operative Society under the Development Agreement ?

(ii) Whether existence of disputes between the members and the Society about their entitlements flowing out of redevelopment process can be a ground for the Court not to make interim measures directing vacation of premises in exercise of power under Section 9 of the Act ?

13) As observed above, two members of the Society who are owners/occupiers of Garage No.6 and bank premises on ground floor are refusing to handover possession of their premises for carrying out redevelopment process of the Society's building. Their grouse is non-grant of similar treatment as compared to residential unit owners. They feel discriminated as the General Body of the Society has resolved to grant lesser additional area to garage and commercial premises owners as compared to residential premises owners. The issue for consideration is whether this grouse of Respondent No.2 and Respondent Nos.3 and 4 can be agitated in a petition filed under Section 9 of the Act.

14) Respondent No.2 as well as Respondent Nos.3 and 4 are admittedly members of the Society. The Society has executed Development Agreement with the Developer and the Society is contractually bound by the covenants agreed therein. The issue about

covenants of agreement executed between the Society and the Developer being binding on individual members is no more *res-integra*. In recent decision delivered by us in *Ambit Urbanspace* (supra), the principle of rights of individual members of the Society being subservient to Society's obligation under the Development Agreement towards the Developer has been discussed. This Court discussed the ratio of the Division Bench judgment in *Girish Mulchand Mehta and another Versus. Mahesh S. Mehta and another*⁶ and held in paras-24 to 28 as under :-

24) The covenants of the Development Agreement are binding on the Society and its members. The issue about a Developer seeking interim measures against a member of the Society who is not a signatory to the Development Agreement, and who have not consented for redevelopment, is no more *res integra*. This Court has repeatedly held that a non-co-operative member of a co-operative housing society is bound by the collective will expressed through the general body resolutions and that therefore the covenants of Development Agreement would bind individual member as well. **It is also equally well settled that if a particular member of the Society is not party to the Development Agreement, Court can make interim measures against such non-co-operative member by having recourse to the provisions of Section 9 of the Act.**

25) In *Girish Mulchand Mehta* (supra), the Division Bench of this Court has dealt with a situation where the Appellants therein were non-co-operative members to the redevelopment process initiated by the Society. They refused to handover possession of their respective flats, *inter alia*, on the ground that they were not parties to the Development Agreement. The Developer took recourse to petition under Section 9 of the Act before the learned Single Judge of this Court, who found that the two non-co-operative members (*Appellants therein*) were causing obstruction resulting in delay in redevelopment of the Society's building. The Single Judge therefore allowed the petition under Section 9 of the Act appointing Court Receiver with power to take physical possession of the flats in question and handing it over to the Developer for the purpose of demolition and construction of the new building. In the Appeal preferred by the said two non-co-operative members before the Division Bench, one of the issues formulated was whether interim measures could be passed by the Court in exercise of power under Section 9 of the Act only against a party to an Arbitration Agreement or arbitration proceedings. The question so formulated is reflected in para-12 of the judgment which reads thus :-

6 2010 (2) MH.L.J. 657

12. The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under section 9 can be invoked only by a party to the Arbitration Agreement. Section 9, however, does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject-matter of the Arbitration Agreement.

26) The Division Bench answered the question so formulated in paragraphs-16 and 18 of the judgment as under :-

16. In the present case, it is not in dispute that the General Body of the Society which is supreme, has taken a conscious decision to redevelop the suit building. The General Body of the Society has also resolved to appoint the respondent No. 1 as the Developer. Those decisions have not been challenged at all. The appellants who were members of the Society at the relevant time, are bound by the said decisions. The appellants in the dispute filed before the Cooperative Court have only challenged the Resolution dated 27-4-2008, which challenge would merely revolve around the terms and conditions of the Development Agreement. As a matter of fact, the General Body of the Society has approved the terms and conditions of the Development Agreement by overwhelming majority. Merely because the terms and conditions of the Development Agreement are not acceptable to the appellants, who are in minuscule minority (only two out of twelve members), cannot be the basis not to abide by the decision of the overwhelming majority of the General Body of the Society. By now it is well established position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see *Daman Singh v. State of Punjab*, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of the Apex Court in the case of *State of U.P. v. Chheoki Employees Co-operative Society Ltd.*, reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the respondent No. 2 Society are in force and not overturned by a forum of competent jurisdiction, the said decisions

would bind the appellants. They cannot take a stand alone position but are bound by the majority decision of the General Body. Notably, the appellants have not challenged the Resolutions passed by the General Body of the Society to redevelop the property and more so, to appoint the respondent No. 1 as the Developer to give him all the redevelopment rights. **The proprietary rights of the appellants herein in the portion (in respective flats) of the property of the Society cannot defeat the rights accrued to the Developer and/or absolve the Society of its obligations in relation to the subject-matter of the Arbitration Agreement.** The fact that the relief prayed by the respondent No. 1 in section-9 Petition and as granted by the Learned Single Judge would affect the proprietary rights of the appellants does not take the matter any further. **For, the proprietary rights of the appellants in the flats in their possession would be subservient to the authority of the General Body of the Society. Moreso, such rights cannot be invoked against the Developer (respondent No. 1) and in any case, cannot extricate the Society of its obligations under the Development Agreement.** Since the relief prayed by the respondent No. 1 would affect the appellants, they were impleaded as party to the proceedings under section 9 of the Act, which was also necessitated by virtue of Rule 803-E of the Bombay High Court (Original Side) Rules. The said Rule reads thus:—

“R. 803-E. Notice of Filing Application to persons likely to be affected.— Upon any application by petition under the Act, the Judge in chambers shall, if he accepts the petition, direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted”.

18. We have no hesitation in taking the view that since the appellants were members of the Society and were allotted flats in question in that capacity at the relevant time are bound by the decision of the General Body of the Society, as long as the decision of the General Body is in force. As observed earlier, the appellants have not challenged the decisions of the General Body of the Society which is supreme, insofar as redevelopment of the property in question or of appointment of the respondent No. 1 conferring on him the development rights. The appellants have merely challenged the Resolution which at best would raise issues regarding the stipulations in the Development Agreement. The General Body of the Society has taken a conscious decision which in this case was after due deliberation of almost over 5 years from August, 2002 till the respondent No. 1 came to be finally appointed as Developer in terms of Resolution dated 2nd March, 2008. Moreover, the General Body of the Society by overwhelming majority not only approved the appointment of respondent No. 1 as developer but also by subsequent Resolution dated 27th April, 2008 approved the draft Development Agreement. Those terms and conditions have been finally incorporated in the registered Development Agreement executed by the Society in favour of respondent No. 1. That decision and act of the Society would bind the appellants unless the said

Resolutions were to be quashed and set aside by a forum of competent jurisdiction. **In other words, in view of the binding effect of the Resolutions on the appellants, it would necessarily follow that the appellants were claiming under the Society, assuming that the appellants have subsisting proprietary rights in relation to the flats in their possession.** It is noticed that as of today the appellants have been expelled from the basic membership of the Society. Their right to occupy the flat is associated with their continuance as member of the Society. It is a different matter that the decision of expelling the appellants from the basic membership of the Society will be subject to the outcome of the decision of the superior authority where the appeals are stated to be pending. If the decision of the Society to expel the appellants is to be maintained, in that case, the appellants would have no surviving cause to pursue their remedy even before the Co-operative Court much less to obstruct the redevelopment proposal. As a matter of fact those proceedings will have to be taken to its logical end expeditiously. Even if the appellants were to continue as members, they would be bound by the decision of the General Body whether they approve of the same or otherwise. In any case, keeping in mind that the Development Agreement does not absolutely take away the rights of the appellants in the flats in question, as after demolition of the existing building, the appellants would be accommodated in the newly constructed flats to be allotted to them in lieu of the existing flats, on the same terms as in the case of other members, provided the appellants continue to remain members of the Society. Under the Development Agreement, the respondent No. 1 is obliged to complete the project within 18 months from the date of receipt of full Commencement Certificate from the Corporation. The full Commencement Certificate would be issued only upon the vacant possession of the entire building is delivered to the respondent No. 1 who in turn would demolish the same with a view to reconstruct a new building in its place. Significantly, out of twelve (12) members, ten (10) members have already acted upon the Development Agreement as well as have executed separate undertaking-cum-agreement with the respondent No. 1 Developer. They have already vacated flats in their occupation to facilitate demolition of the existing building and have shifted to alternative transit accommodation as back as in February, 2009. The project has been stalled because of the obstruction created by the appellants herein who are in minuscule minority. The said ten members of the Society who have already shifted their premises, they and their family members are suffering untold hardship. At the same time, the respondent No. 1 who has already spent huge amount towards consideration of the Development Agreement and incurred other incidental expenses to effectuate the Development Agreement in addition will have to incur the recurring cost of paying monthly rent to the ten members who have already shifted to transit accommodation. The learned Single Judge has noted that the appellants are not in a position to secure the amount invested and incurred including the future expenses and costs of the respondent No. 1 herein in case the project was to be stalled in this manner. Even before this Court the appellants have not come forward to compensate the respondent No. 1 herein and the other ten members of the Society for the loss and damage caused to them due to

avoidable delay resulting from the recalcitrant attitude of the appellants. **Considering the impact of obstruction caused by the appellants to the redevelopment proposal, not only to the respondent No. 1 Developer but also to the overwhelming majority of members (10 out of 12) of the Society, the learned Single Judge of this Court opined that it is just and convenient to not only appoint the Court Receiver but to pass further orders for preservation as well as protection and improvement of the property which is subject-matter of Arbitration Agreement. We have already noticed that the Court's discretion while exercising power under section 9 of the Act is very wide.** The question is whether in the fact situation of the present case it is just and convenient to appoint Court Receiver coupled with power conferred on him to take over possession of the entire building and hand over vacant and peaceful possession thereof to the respondent No. 1 who in turn shall redevelop the property so as to provide flats to each of the members of the Society in lieu of the existing flats vacated by them as per the terms and conditions of the Development Agreement, as ordered by the learned Single Judge. For the reasons noted by the Learned Single Judge which we have reiterated in the earlier part of this decision, we find that it would be just and convenient to not only appoint Court Receiver to take over possession of the property but also pass further order of empowering the Court Receiver to hand over vacant possession of the suit building to the respondent No. 1 to enable him to complete the redevelopment work according to the terms and conditions of the Development Agreement.

(emphasis and underlining added)

27) The Division Bench in *Girish Mulchand Mehta* took note of Rule 803E of the Bombay High Court Original Side Rules under which the Court is empowered to direct issuance of notice to all persons who are likely to be affected by the proceedings. The Division Bench held that Court's powers under Section 9 are very wide and accordingly upheld the order of the Single Judge directing vacation of possession of flats even though the Appellants therein were not signatories to the Development Agreement. What is important are the findings recorded by the Division Bench holding that the proprietary rights all members of the Society in respect of the flats in their possession would be subservient to right acquired by the developer under the Development Agreement and cannot extricate the Society of its obligations under that agreement.

28) In our view, the judgment in *Girish Mulchand Mehta* clearly lays down a law that covenants of Development Agreement would bind even non-cooperative members, who are not signatories thereto and Court can exercise power under Section 9 of the Act to direct handing over of possession of the flats to the developer by such non-cooperative members for the purpose of demolition and construction of new building. The judgment in *Girish Mulchand Mehta* has consistently been followed in various decisions of this Court and in order not to increase the length of this judgment, we find it unnecessary to discuss ratio of all of those judgments. This is how the issue of jurisdiction of Court exercising power under Section 9 of the Act to make interim measures against member of

Co-operative Society who is not signatory to the Development Agreement is well settled.

(emphasis and underlining supplied)

15) In *Ambit Urbanspace*, the garage occupiers were not members of the Society and therefore this Court has decided the further issue of permissibility to make interim measures under Section 9 of the Act against a person occupying premises in the Society's building but not a member thereof. In the present case, it is not necessary to go into the said aspect as Respondent No.2-garage occupier is not only a member of the Society but the Developer has agreed to allot him permanent alternate accommodation. Therefore, the ratio of the judgment in *Ambit Urbanspace* is relevant to the present Appeals only to the extent of principle of rights of individual members of the Society being subservient to Society's obligation under the Development Agreement. This Court exercising jurisdiction under Section 9 of the Act can make interim measures against individual members of the Society who refuses to co-operate in the redevelopment process. Thus covenants of Development Agreement would bind even a non-co-operating member of the Society. The Court exercising powers under Section 9 of the Act can therefore make interim measures *qua* such non-co-operating members by directing them to vacate possession of premises for ensuring smooth redevelopment of Society's building. This would conclude the first issue for determination.

16) Now we turn to the second and the main issue involved in the Appeals. As observed above, the learned Single Judge has taken note of dispute between Respondent Nos.2 to 6 with the Society about grant of lesser additional area in redevelopment process. It is held that Respondent Nos.2 to 4 are being discriminated by not granting *pari pasu* benefit of additional area as compared to residential unit owners. The issue for consideration is whether the Court exercising power

under Section 9 of the Act can refuse to make interim measures on the ground of existence of such dispute between Society and members. As held in *Girish Mulchand Mehta* (supra), the grievances between the Society and its members *qua* entitlements flowing out of redevelopment process cannot be agitated in proceedings filed under Section 9 of the Act. They need to be decided separately under Section 91 of the M.C.S. Act as the Co-operative Court alone has jurisdiction to decide validity of Resolutions adopted by the General Body of the Society. If such disputes do not touch upon business of Society, the member will have to file a Civil Suit. This position is also clear from the following observations made by this Court in judgment in *Calvin Properties and Housing* (supra) :-

In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can be granted by this Court. This Court is thus not adjudicating on the issue raised by respondent Nos. 2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, respondent Nos. 2 to 6C cannot stop the redevelopment project.

(emphasis and underlining added)

17) In our view, therefore the alleged grievances of Respondent Nos.2 to 4 in respect of various decisions taken by the General Body and Managing Committee of the Society in implementing the redevelopment process cannot be decided in petition filed under Section 9 of the Act nor existence of such disputes would be a bar for Section 9 Court to make interim measures in a given case. The members of the Society are bound by the covenants of the Development Agreement and if they act contrary to the covenants of the Development Agreement, the Court exercising power under Section 9 of the Act can

step in and make necessary interim measures. Merely because an individual member has some grievances against the Society in respect of either appointment of Developer or implementation of redevelopment process or grant of additional area, the same needs to be resolved outside the framework of Section 9 of the Arbitration Act. Such grievances can be agitated either in a dispute filed under Section 91 of the M.C.S. Act if they touch upon the business of the Society or in the alternative members can file a Civil Suit in respect of their grievances *qua* the decisions adopted by the Society if they do not touch upon the business of the Society. In the present case, Respondent No.2 has raised serious disputes about the manner in which the redevelopment process is implemented by the Society. Undertaking redevelopment through a Developer, choice of Developer made by the General Body of the Society, as well as the benefits granted to the garage owners are sought to be questioned by Respondent No.2. He needs to adopt appropriate proceedings *qua* his grievances. While Respondent Nos.3 and 4 have filed a dispute before Co-operative Court, Respondent No.2 has apparently not filed any proceedings to challenge the Resolutions adopted by the General Body of the Society. However, existence of such disputes cannot be a reason to defeat petition filed under Section 9 of the Act.

18) Reliance placed by Mr. Narula on Division Bench judgment of this Court in *Avenues Seasons Properties LLP* (supra) does not cut any ice. This Court has decided Appeal under Section 37 of the Act in which order passed under Section 8 of the Act was under challenge. In case before the Division Bench, the Plaintiffs had sought a declaration that their bungalows were separate and individual structures and that the Resolution passed by the Housing Society seeking to include their bungalows in redevelopment process was illegal. In that suit, the

Developer filed an application under Section 8 of the Act for return of plaint by relying on arbitration clause in the Development Agreement executed with the Society. In the light of this factual position, the issue before the Division Bench was whether Plaintiffs, who did not sign the Development Agreement, were bound by arbitration clause and whether the plaint in their suit could be directed to be returned by having recourse to Section 8 of the Act. This Court concluded that a party who is not a signatory to the Development Agreement and who had filed a suit seeking a declaration for exclusion of bungalows from redevelopment process could not be relegated to arbitration by virtue of agreement executed between the Developer and the Society. In our view, the judgment has no application to the facts of the present case. Though it is sought to be suggested by Mr. Narula that the views expressed in *Avenues Seasons Properties LLP* and in *Ambit Urbanspace* are not consistent, in our view, there is no inconsistency in the views as the issue before the Division Bench in *Avenues Seasons Properties LLP* was entirely different and arose in the context of a suit filed by bungalow owners for a declaration that they should be treated separately from the other structures of the Society and should not be included with Society's redevelopment process. On the other hand, in *Ambit Urbanspace*, the garage occupiers, who were not signatories to the Development Agreement, wanted to participate in the redevelopment process, but were insisting that they must be provided with permanent alternate accommodations while carrying out redevelopment of the Society's building. Apart from this, there is a fundamental difference between the nature of proceedings involved in both the judgments. *Avenues Seasons Properties LLP* proceedings arose out of Developer's application under Section 8 of the Act seeking return of plaint and relegation of dispute to arbitration, whereas proceedings in *Ambit Urbanspace* arose out of petition filed under

Section 9 of the Act. The position remains consistent that a non-member and a non-signatory to the Development Agreement can also be roped in for seeking interim measures under Section 9 of the Act if such a person occupies any premises in the building of the Society. In *Avenues Seasons Properties LLP*, the claim of the Plaintiffs was that they do not occupy any part of the building of the Society and their bungalows are independent than that of structures of the Society. This the fundamental difference between the two judgments. In the instant case, Respondent Nos.2 to 4 are part of Society's building and have not taken a position that they need to be excluded from redevelopment process. In our view, therefore reliance by Mr. Narula on judgment of Division Bench of this Court in *Avenues Seasons Properties LLP* does not assist the case of Respondent No.2.

19) Mr. Narula has relied upon celebrated judgment of the Apex Court in *Wander Ltd.* (supra) in support of his contention that Appellate Court cannot interfere in exercise of discretion of the Trial Court while passing interim order. It must be observed at once that the judgment in *Wander Ltd.* outlines the jurisdiction of the Appellate Court exercisable under Order 43 of the Civil Procedure Code, 1908 against an order of Trial Court granting or refusing to grant temporary injunction under Order XXXIX Rules 1 and 2 of the Code. In that sense, principles may not strictly apply to proceedings before the Appellate Court under Section 37 of the Act while deciding correctness of order made under Section 9 of the Act. However, even if the principle enunciated in *Wander Ltd.* are held to be applicable to Appeal under Section 37 of the Act, we are of the view that interference in the order passed by the learned Single Judge is warranted in the facts and circumstances of the present case as exercise of discretion is based on irrelevant consideration of entitlement of Respondent Nos.2 to 4 in the

matter of allotment of additional area in the new building. As held above, dispute of allotment of additional area is not a relevant consideration for deciding the petition under Section 9 of the Act as the said dispute needs to be resolved in independent proceedings under Section 91 of the M.C.S. Act or by filing a Civil Suit. Ordinarily, the Appellate Court would be loathe in interfering with discretion exercised by the learned Single Judge. However, where irrelevant consideration has affected the mind of the Court while exercising the discretion, the Appellate Court would be justified in interfering with exercise of discretion. In the instant case, the equitable and discretionary relief of interim measures is declined to the developer by taking into consideration the aspect of alleged discriminatory treatment meted out to Respondent Nos.2 to 4. What is however ignored is the position that the Developer has no role to play in deciding the distribution of additional area between the members. That decision is taken by majority of members of the society. Thus, the relief of interim measures is declined to the developer by taking into consideration a factor over which it has no control. Therefore, in our view exercise of discretion while declining relief under Section 9 of the Act is improper warranting interference by the Appellate Court.

20) Reliance is placed by both the parties on judgment of the Apex Court in *Bengal Secretariat cooperative Land Mortgage Bank and Housing Society Ltd.* (supra). Mr. Khandeparkar has relied on the said judgment in support of the contention that Court cannot sit as an Appellate Authority over commercial wisdom of General Body of the Society, whereas, Respondents have relied upon very same judgment in support of the contention that if the decision of General Body of the Society is product of fraud or misrepresentation or is opposed to statutory provisions, the Court can interfere in the decision of the

General Body of the Society. There can be no dispute about this proposition. However, the issue is about the exact forum which can go into the correctness of the Resolution adopted by the General Body of the Society. If the Resolution adopted by the General Body of the Society touches upon business of the Society, such resolution needs to be challenging by filing application under Section 91 of the M.C.S. Act. On the other hand, if such Resolution does not touch upon business of the Society, the remedy for an affected party is to file a Civil suit. Under no circumstances, however, such dispute can be remotely raised in proceedings filed under Section 9 of the Act.

21) So far as the issue of transfer of membership of Respondent Nos.3 and 4 in pursuance of execution of gift is concerned, the same is of little relevance to the redevelopment process undertaken by the Society and the Developer. If the donees are aggrieved by non-grant of membership to them in respect of Flat No.8, they have appropriate remedy available under the provisions of the M.C.S. Act. As of now, the Developer can only deal with current members of the Society and as and when the donees of Respondent Nos.3 and 4 secure membership of the Society, the Developer is bound to handover possession of alternate accommodation in favour of such transferee member. Vacation of possession of the premises need not wait admission of donees as members of the society. Vacation of premises by original member and grant of possession of alternate accommodation to the succeeding member is not barred. In our view therefore the aspect of execution of gift by Respondent Nos. 3 and 4 is wholly irrelevant to the issue of vacation of premises for carrying out the redevelopment process.

22) The last issue that remains is about possibility of arbitration taking place between the parties. The Society and its members are

bound by the covenants of the Development Agreement. If Society fails to discharge its obligations under the Development Agreement and if its members do not vacate possession of premises, the Developer will have to invoke arbitration and seek appropriate reliefs against the Society. Non-vacation of premises by Respondent Nos. 2 to 4 can thus become a trigger point for invocation of arbitration by Developer against the Society. It is therefore difficult to hold at this juncture that there is absolutely no possibility of arbitration taking place between the parties.

23) In our view, therefore the Developer has made out a case for grant of interim measures in petition filed under Section 9 of the Act. We accordingly proceed to pass the following order :-

(I) Judgment and order dated 20 June 2025 passed in Arbitration Petition No. 175/2025 is set aside.

(II) Respondents Nos. 2 to 4 are directed to execute consent letters and to vacate the possession of the premises in their occupation to the Developer in terms of the Development Agreement dated 12 March 2025 for the purpose of demolition and redevelopment of Society's building.

(III) In the event Respondent Nos.2 to 4 fail to vacate possession of the premises in their occupation within a period of four weeks, the Developer is granted liberty to approach the Court Receiver of this Court, who shall take possession of premises in occupation of Respondent Nos.2 to 4 and handover the same to the Developer by taking police assistance, if necessary.

24) With the above directions, the Arbitration Appeals are **allowed** without any order as to costs. With dismissal of the Appeals, nothing survives in Interim Applications and the same also stand disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]