IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11281 OF 2025

Shivranjan Towers Sahakari Griha Rachana
Sanstha Maryadit,
A Cooperative Housing Society, registered under
the provisions of Maharashtra Cooperative
Societies Act, 1960
Having office at: Survey No.
12/19+20+22+23+29+30+31,
Someshwarwadi, Pashan, Pune – 411 008.
Through Its Chairman:
Mr. Avinash Benegal,
Age:Adult, Occupation: Business
Address for correspondence; Survey No.
12/19+20+22+23+29+30+31,
Someshwarwadi, Pashan, Pune – 411 008. ..Petitioner

Versus

1. Bhujbal Constructions
A partnership firm in accordance
with the provisions of Indian Partnership
Act, 1932,
Having its Office at: Survey No. 12,
Someshwarwadi, Pashan, Pune – 411 008.

Represented Through its Partners:

a. Sanjay Tukaram Bhujbal
Age: 69 years, Occupation: Business

b. Dilip Tukaram Bhujbal
Age: 73 years, Occupation: Business

Both residing at: Survey No. 12,
Someshwarwadi, Pashan, Pune – 411 008.

2. Subhadra Tukaram Bhujbal
Age: 93 years, Occupation: Agriculturist.

3. Sanjay Tukaram Bhujbal
Age: 69 years, Occupation: Business

4. Dilip Tukaram Bhujbal
Age: 73 years, Occupation: Business

5. Kishor Tukaram Bhujbal
Age: 67 years, Occupation: Business and Agriculture

6. Vijay Tukaram Bhujbal
Age: 75 years, Occupation: Business and Agriculture

7. Sameer Vijay Bhujbal
Age: 48 years, Occupation: Business and Agriculture

8. Yogesh Sanjay Bhujbal
Age: 45 years, Occupation: Business and Agriculture

Nos. 2 to 8 residing at: Having its Office at: Survey No. 12,
Someshwarwadi, Pashan, Pune – 411 008. …Respondents

Mr. A.A. Kumbhakoni, Senior Advocate, with Ronak Utagikar, Anand Akut, Ameya Patwardhan and Manoj Badgujar, for the Petitioner.
Mr. S.C. Wakankar, with Aishwarya Bapat, for Respondent No.1.
Mrs. S.D. Chipade, AGP, for the Respondent-State.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 20th AUGUST 2025
PRONOUNCED ON : 4th SEPTEMBER 2025

JUDGMENT:

1. The challenge in this Petition is to an order dated 14th May 2025 passed by the sole Arbitrator on an Application filed by the Petitioner-Respondent in Arbitration Claim Petition No. 1 of 2025, under Section 16 of the Arbitration and Conciliation Act, 1996 ("the Act of 1996").

2. The background facts necessary for the determination of this Petition can be stated as under:

2.1 Respondent Nos. 2 to 8 were the erstwhile holders of the parcels of land bearing Survey Nos. 12/19+20+22+23+29+30+31, admeasuring 27800 sq mtrs situated at village Pashan, Taluka Haveli, District Pune. Under diverse development agreements, the Respondent Nos. 2 to 8 granted development rights in respect of the aforesaid land in favour of the Respondent No.1-firm. Pursuant thereto the Respondent No.1 constructed five buildings i.e. A-2, B-2, B-3, C-2 and C-3 and sold various tenements therein to the purchasers by executing Agreements for Sale. The Respondent No.1 was thus governed by the legal regime enshrined by the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (" the MOFA"). The Respondent No.1 allegedly failed to discharge its obligations under MOFA in as much as an association of flat purchasers was not formed. Consequently, the flat purchasers of buildings A-2, B-2, B-3, C-2 and C-3 formed the Petitioner-society. As the Respondent No.1 failed to convey the land in favour of the Petitioner-society, in breach of

its obligations under MOFA, the Petitioner filed an application under Section 11 of the MOFA before the Competent Authority.

2.2 By an order dated 28th December 2018, the Competent Authority ordered to issue a certificate for grant of unilateral deemed conveyance in respect of 16280.70 sq mtrs land out of the total area of 27800 sq mtrs, alongwith the buildings constructed thereon. Since the Respondent No.1 did not execute the conveyance, the deemed conveyance came to be executed and registered by the authorised officer on 13th February 2019.

2.3 The Respondent No.1 issued a notice to the Petitioner thereby invoking Arbitration, as provided under Clause 38 of the Agreement for Sale executed in favour of the the individual purchasers. Eventually, the Respondent filed Arbitration Petition No. 145 of 2024 seeking appointment of an Arbitrator under Section 11 of the Act of 1996. The said Petition was allowed by an order dated 9th December 2024. However, it was clarified that the Petitioner was at liberty to raise all questions of jurisdiction within the meaning of Section 16 of the Act of 1996 and all questions in that regard were expressly kept open.

2.4 The Respondent No.1 filed a statement of claim before the Arbitrator. In view of the peremptory order passed by the learned Arbitrator, the Petitioner was constrained to file Written Statement as

well as a counter claim thereto. However, availing the liberty granted by this Court, the Petitioner filed an Application under Section 16 of the Act of 1996, asserting *inter alia* that the dispute is not arbitrable and there was no Arbitration Agreement between the Claimant-Respondent No.1 and the society-Petitioner herein. The Arbitration Clause embedded in individual Agreement executed by the members of the Petitioner-society cannot be construed as "an existing Arbitration Agreement" between the Petitioner and Respondent No.1, as required under Section 7 of the Act of 1996. That the Petitioner-society was not even signatory to the alleged Arbitration Agreement. Conversely the Deed of Deemed Conveyance executed in favour of the Petitioner-society does not contain any Arbitration Clause.

2.5 The Respondent No.1 resisted the Application by filing Reply. It was *inter alia* contended that since indisputably the individual Agreement holders had formed the Petitioner-society, all the rights and responsibilities of the individual Agreement holders, who were the members of the Petitioner-society, stood vested in the Petitioner-society. Reliance was sought to be placed on Section 8 of the Act of 1996 to infer the existence of an arbitral dispute between the Petitioner and Respondent No.1.

2.6 By the impugned order the learned Arbitrator was persuaded to dismiss the Application under Section 16 opining, *inter alia,* that the title

of the Petitioner-society flowed through the individual Agreements and, thus, the Petitioner-society was bound by the terms, rights and responsibilities as incorporated in the individual Agreements. It was further observed that to sustain the counter claim, the Petitioner-society was relying upon the very same individual Agreements which contain the Arbitration Clause. Thus, the challenge to the jurisdiction of the Arbitrator was not sustainable.

2.7 Being aggrieved, the Petitioner-society has invoked the writ jurisdiction.

3. At the outset, Mr Wakankar, the learned Counsel for the Respondent No.1 assailed the maintainability of the Petition.

4. It was submitted that the legal position is fairly crystallized to the effect that an order passed by the Arbitrator under Section 16 of the Act of 1996 can only be assailed in a proceedings under Section 34 of the Act of 1996 and such an order is not amenable to the extraordinary writ jurisdiction, except in a case of patent lack of inherent jurisdiction. Thus, according to Mr. Wakankar, the Petition deserves to be dismissed *in limine*.

5. Mr. Kumbhakoni, the learned Senior Advocate for the Petitioner, countered the submissions on behalf of the Respondent No.1 with tenacity. It was urged that the present case is indeed one of exceptional rarity. In the face of the incontestable documents on record, the only

inference that can be drawn is that there is no Arbitration Agreement between the Petitioner and Respondent No. 1 and the Petitioner cannot be compelled to arbitrate by banking upon the Agreement for Sale executed by individual flat purchasers. Resultantly, it is the case of patent lack of inherent jurisdiction. Amplifying the submission, Mr. Kumbhakoni would urge that, the endeavour of Respondent No.1 to compel the Petitioner to arbitrate by propounding the theory of "claiming through" does not merit countenance as the controversy is set at rest by the Constitution Bench Judgment in the case of **Cox and Kings Limited Vs Sap India Private Limited & Anr.**[1]

6. Mr. Kumbhakoni further submitted that under Section 36 of the Maharashtra Cooperative Societies Act 1960, the Petitioner-society has an independent juristic existence, apart from its individual members. The Petitioner-society is legally entitled to acquire and hold its own property. Since the substance of the challenge in the statement of the claim is to the conveyance of the title to the property under the Deed of Deemed Conveyance, in which there is no Arbitration Clause, the initiation of Arbitration against the Petitioner who is a non-signatory to the prior Agreement to sale between the Respondent No.1 and the individual flat purchasers, is legally incompetent. To this end, Mr. Kumbhakoni placed reliance on a judgment of a learned Single Judge of this Court in the case of **BKS Galaxy Realtors LLP (Previously known BKS**

1 (2024) 4 SCC 1.

Galaxy Realtors Pvt Ltd) and Ors Vs Sharp Properties and Ors,[2] wherein it was enunciated that once a conveyance is executed the object, purpose, effectiveness and validity of the Agreement for Sale comes to an end and thus the Arbitration Clause in such Agreement for Sale comes to an end as the said Agreement stands fully discharged and does not have any legal effect upon the execution of the conveyance.

7. Before adverting to note the legal framework which informs the exercise of the writ jurisdiction, keeping in view the minimal interference in the arbitration process, it may be necessary to note the nature of the claim of the Respondent No.1 before the learned Arbitrator. It is the stated case of the Respondent No.1 that it has no objection to the grant of conveyance to the extent of land component admesuring 7469.39 sq mtrs as the entitlement of the Petitioner-society is restricted to 7469.39 sq mtrs of land and not 16280.70 sq mtrs of land as granted by the Competent Authority. Under the order dated 28th December 2018 the Competent Authority has conveyed the area of land more than the lawful entitlement of the Petitioner-society and its members. The Respondent No.1 has thus sought a declaration that the entitlement of the Petitioner-society is restricted to 7469.39 sq mtrs of land and not 16280.70 sq mtrs as recorded in the Deed of Deemed Conveyance dated 13th February 2019, and the consequential reliefs.

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2 2024 SCC OnLine Bom 3514.

8. It would be contextually relevant to note that there is not much controversy over the fact that the Respondent No.1 had executed Agreement for Sale in favour of individual flat purchasers who eventually formed the Petitioner-society. The said Agreements contain an Arbitration Clause, as under:

> "38. In case of any dispute between the Promoter and the Purchaser regarding interpretation of any of the terms of this Agreement or regarding any aspect of the transaction including quality of construction work, defective service by the Promoter, delay in construction work and/or sale deed, alterations in the plan, parking arrangement, grant of exclusive uses, rendering of account etc then such dispute shall be referred to the arbitration of a single arbitrator to be appointed by the Promoter whose decision shall be final and binding on both the parties."

9. The core controversy revolves around the question as to whether the Petitioner-society is bound by the aforesaid Arbitration Clause? The learned Arbitrator, when his jurisdictional competence was questioned by filing an Application under Section 16 of the Act of 1996, has ruled in favour of the existence of jurisdiction. Can a challenge thereto be entertained by this Court in exercise of the writ jurisdiction is the moot question?

10. The legal regime enshrined by the Act of 1996 was directed towards the consolidation of the law governing the Arbitration. The Act

of 1996 is thus a self-contained code. In order to achieve the object of the speedy disposal of the arbitration matters by the Arbitral Tribunals, which are the forums of the dispute redressal chosen by the parties, the Act of 1996 prescribes time limits for the disposal of such matters and even the Applications and Appeals preferred against the orders passed thereunder.

11. The minimal judicial intervention is emphasized by incorporating a non-obstante clause in Section 5 of the Act of 1996, which provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part -I of the Act of 1996, no judicial authority shall intervene except where so provided in the said Part. Section 37 of the Act of 1996 provides a limited right of Appeal against specified judgments and orders only. The Legislative intent becomes more clear in Sub-section (3) of Section 37, which interdicts a second Appeal against an order passed under Section 37 of the Act of 1996. Thus, the determination under Section 16 of the Act of 1996 by the Arbitrator, has to follow the discipline envisaged by the said section, which provides a mechanism of challenge under Section 34 of the Act of 1996.

12. This brings to the fore the limits of the exercise of the writ jurisdiction, premised on the pristine proposition that the legal regime under an enactment cannot override the constitutional guarantee and

right. The question was elaborately considered by the Three Judge Bench of the Supreme Court in the case of **Deep Industries Limited Vs Oil and Natural Gas Corporation Limited & Anr,**[3] wherein the Supreme Court after adverting to the relevant provisions of the Act of 1996 and the previous pronouncements including the Seven Judge Bench Judgment of the Supreme Court in the case of **SBP & Co Vs Patel Engineering Ltd And Anr,**[4] expounded the legal position as under:

> "17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.
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> 18. … … …
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> 19. … … …

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3 (2020) 15 SCC 706.

4 (2005) 8 SCC 618.

20. While the learned Additional Solicitor General is correct in stating that this statement of the law does not directly apply on the facts of the present case, yet it is important to notice that the seven-Judge Bench has referred to the object of the Act being that of minimizing judicial intervention and that this important object should always be kept in the forefront when a 227 petition is being disposed of against proceedings that are decided under the Act.

21. … … …

22. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the arbitrator in the Section 16 application, and then decided that the two year ban was no part of the notice for arbitration issued on 02.11.2017, a finding which is directly contrary to the finding of the learned Arbitrator dismissing the Section 16 application. For this reason alone, the judgment under appeal needs to be set aside."

(emphasis supplied)

13. In the case of **Punjab State Power Corporation Limited Vs Emta Coal Limited And Anr**[5] further explaining the import of the observations in paragraph 17 in the case of **Deep Industries (Supra)** (extracted above), the Supreme Court cautioned against the purported misuse of the said expression of law, in the following words:

> "4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a *patent* lack in inherent jurisdiction. A *patent* lack of inherent jurisdiction requires no argument whatsoever —it must be that perversity of the order that must stare one in the face.
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> 5. Unfortunately, the parties are using this expression which is in our judgment in **Deep Industries Ltd (Supra)**, to go to the Article 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in **Deep Industries (Supra)** and dismiss the Article 227 petition on the ground that there is no such perversity in the order which leads to *patent* lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things."

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5 (2020) 17 SCC 93.

14. The issue again came up for consideration before a Three Judge Bench of the Supreme Court in **Bhaven Construction Through Authorised Signatory Premjibhai K. Shah Vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr,**[6] wherein the sole Arbitrator had rejected an Application of the Respondent No.1 therein and held that the sole Arbitrator had jurisdiction to adjudicate the dispute. After adverting to the judgment of the Supreme Court in the case of **Nivedita Sharma Vs Cellular Operators Association of India,**[7] the Supreme Court enunciated that, it is prudent for a judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear, "bad faith" shown by one of the parties. This high standard set by the Supreme Court is in terms of the legislative intention to make the Arbitration fair and efficient.

15. With reference to the decision in the case of **Deep Industries (Supra)**, the Supreme Court further observed that Section 16 of the Act of 1996 necessarily mandates that the issue of jurisdiction must be dealt first by the Tribunal before the Court examines the same under Section 34. The Respondent No.1 was, therefore, not left remediless, and has statutorily been provided a chance of Appeal.

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6 (2022) 1 SCC 75.

7 (2011) 14 SCC 337.

16. The position in law which thus emerges is that, ordinarily, the challenge to an order determining the jurisdiction of the Arbitral Tribunal must be through the regime envisaged by Section 16 and Section 34 of the Act of 1996. A Writ Petition can be entertained by the High Court only in cases of patent lack of inherent jurisdiction. In that category also, the lack of jurisdiction should be such that it does not warrant any investigation and becomes so glaringly evident that no other inference is plausible. An exceptionally rare situation which justify the exercise of plenary jurisdiction may also arise where in view of the order passed by the Arbitrator, one of the parties is left completely remediless or "bad faith" is clearly exhibited by one of the parties. Barring these exceptional situations, the Writ Court will be well-advised not to interdict the arbitral process by adhering to the principle of minimal interference and non break-ability of the arbitral process.

17. Whether the Petitioner has succeeded in making out such a strong case as to cross the jurisdictional impediment? Mr Kumbhakoni wold urge, the answer must be in the affirmative. The thrust of the submission of Mr. Kumbhakoni was that the Deed of Deemed Conveyance which is the subject matter of challenge in the Arbitration proceeding does not contain the Arbitration Clause and the fact that the Agreements to Sale in favour of individual flat purchasers contain the afore-extracted Arbitration Clause is of no avail.

18. The first part of the submission premised on the absence of the Arbitration Clause in the Deed of Deemed Conveyance does not carry much substance. An Arbitration Agreement is a creature of contract. The principle of party autonomy is the sub-stratum of arbitration process. A Deed of unilateral Deemed Conveyance, in the very nature of things, is strictly not an instrument *inter-vivos*. Such a Deed of unilateral Deemed Conveyance would not incorporate an Arbitration Clause which is an expression of the consensual decision to resolve the dispute by a forum of choice. Therefore, the submission of Mr. Kumbhakoni that since the Conveyance Deed does not contain an Arbitration Clause, the Petitioner-society cannot be compelled to arbitrate, does not carry much substance. Consequently, reliance placed by Mr. Kumbhakoni on the judgment in the case of **BKS Galaxy Realtors LLP (Supra)** is inapposite in the facts of the cast at hand.

19. Can the Petitioner-society be compelled to arbitrate in view of an Arbitration Clause contained in the Agreement for Sale executed in favour of the individual flat purchasers?

20. Undoubtedly, the Petitioner-society is not a signatory to the said Agreement for Sale and it could not have been a signatory as it was yet to be formed. Therefore, the issue cannot be determined only on the premise that the Petitioner-society is not a signatory to those Agreement for Sale which contains the Arbitration Clause.

21. At this juncture the nature of a cooperative society and especially its relations qua the members who form the society after its incorporation, assumes critical salience. Under Section 36 of the MCS Act 1960, the registration of a society shall render it a body corporate by name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted.

22. With the registration under the Act of 1960, a society becomes a corporate body. In the case of **Daman Singh & Ors Vs State of Punjab & Ors,**[8] a Constitution Bench of the Supreme Court had an occasion to consider the juridical status of a cooperative society under the Punjab Cooperative Societies Act, 1961. Section 30 of the Punjab Cooperative Societies Act, 1961 also conferred status of a body corporate on every society registered thereunder. In the context of the submission that the cooperative societies were not the corporations within the meaning of Article 31-A(1)(c) of the Constitution of India, the Supreme Court examined as to what a "corporation" means and comprehends ordinarily and in the scheme of the Constitution. Thereafter the Supreme Court ruled that there cannot be the slightest of doubt that a cooperative society is a corporation as commonly understood.

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8 (1985) 2 SCC 670.

23. In the case of **Daman Singh (Supra)** the Supreme Court also expounded the position in law as to what happens to the person who formed themselves into a society or subsequently became members of the society. The Supreme Court enunciated that once a person becomes a member of a cooperative society, he looses his individuality qua the society and has no independent rights except those given to him by statute and by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.

24. In the light of the aforesaid juridical status of a cooperative society and the relation of the individual members qua the society, the nature of the underlying dispute between the parties assumes critical salience. It can hardly be contested that the rights and obligations of the parties have their genesis in the Agreements for Sale executed by Respondent No.1 in favour of individual flat purchasers. By executing those Agreements the Respondent No.1 subjected himself to the regime of MOFA.

25. The legal regime under MOFA postulates that after execution of an Agreement for Sale of the flats/units in a building to be constructed if the Promoter, on construction and putting the flat/unit purchasers in possession of the respective units, fails to take steps for formation of cooperative society, as mandated under Section 10 thereof, or fails to

convey the title and execute the documents, in accordance with the terms of the Agreement, the obligations of the Promoter can be enforced by approaching Competent Authority and, thereupon, the Competent Authority is empowered to issue a certificate to the Sub-Registrar or any other appropriate Registration Officer certifying that it is a fit case for enforcing unilateral execution of a conveyance conveying the right, title of the Promoter in the land and building in favour of the society as deemed conveyance.

26. In a recent pronouncement in the case of **Arunkumar H. Shah Huf Vs Avon Arcade Premises Cooperative Society Limited and Ors,**[9] the Supreme Court enunciated that the Competent Authority while deciding the Application under Section 11(3) of MOFA by following summary procedure cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights.

27. The aforesaid position in law has been crystallized by a long line decisions of this Court, commencing from the judgment of a learned Single Judge of this Court in the case of **Mazda Construction Company Vs Sultanabad Darshan CHS Ltd.**[10]

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9 2025 SCC OnLine SC 828.

10 2012 SCC OnLine Bom 1266.

28. In the light of aforesaid legal position, reverting to the facts of the case, incontrovertibly, the Respondent No.1 could have instituted a Suit seeking the determination of the question of title over the area of land in respect of which the certificate of deemed conveyance has been ordered to be issued by the Competent Authority. Mr. Kumbhakoni attempted to salvage the position by canvassing a submission that the Petitioner-society would not be prejudiced if such a course is adopted by the Respondent No.1 as the avenues against an adverse determination in such a Suit are not as restricted as in the case of an award in an arbitration proceeding. The submission looses sight of the very efficacy of the arbitration as a preferred dispute resolution mechanism, by the choice of the parties. If a Suit could be legally instituted, a *fortiori* the Respondent No. 1 could invoke the arbitration, provided there exists an arbitration agreement.

29. The matter can be looked at from another perspective. What the Petitioner-society enforced before the Competent Authority was the obligation of the Respondent No.1 under Section 11(1) to convey to the Petitioner his right, title and interest in the land and building in accordance with the Agreement executed under Section 4 of the MOFA in favour of the individual flat purchasers. The right accrued to the Petitioner-society under Section 11 of the MOFA arose from the obligation incurred by the Respondent No.1 under the Agreements for

Sale, under Section 4 of the MOFA. Independent of such obligations of the Respondent No.1, the Petitioner-society could not have maintained the application for deemed conveyance.

30. The learned Arbitrator was, therefore, justified in holding that if the Petitioner-society was seeking to enforce the rights created in favour of the individual members under the Agreements for Sale, the Petitioner-society cannot claim that it is not bound by the arbitration clause contained in those Agreements.

31. As noted above, the juridical status of a cooperative society is that of a Corporation. Consistent with this position, an analogy of enforcement of pre-incorporation contracts contained in Section 15(h) and 19(e) of the Specific Relief Act, 1963 can also be drawn. In the case at hand the Respondent No.1 entered into Agreements for Sale in favour of individual flat purchasers who subsequently formed the cooperative society. It is true the individual members at that point of time were not in the shoes of the Promoter of the society. However, after formation of the cooperative society by the individual members, the cooperative society professed to enforce the obligations of the Respondent No.1 under those very Agreements for Sale, espousing the rights of the individual flat purchasers as a Corporation aggregate.

32. In the instant arbitration proceeding, the Respondent No.1 is seeking declaration in regard to the deemed conveyance on the basis of

those very Agreements for Sale which form the basis of rights and obligations of the parties. Respondent No.1 now cannot enforce the contractual obligations against the individual flat purchasers, when they have formed the Petitioner-society and deemed conveyance has been ordered to be executed in favour of the Petitioner.

33. In the case of **Radhakrishna Ananta Prabhu and Ors Vs Giri Constitution and Ors,**[11] a learned Single Judge of this Court held that on incorporation, the contract becomes enforceable by or against the company or the society depending upon the terms of incorporation and adoption of the contract by the company or society and the provisions of Section 15(h) and 19(e) of the Specific Relief Act. 1963 would apply to such contracts.

34. For the forgoing reasons, I find it difficult to agree with the submission of Mr. Kumbhakoni that the case at hand is governed by the principles of law which apply to the arbitrability of the dispute with a non-signatory to the contract. The Petitioner-society cannot be said to be a third party to the arbitration dispute.

35. Resultantly, it cannot be said that the Petitioner has succeeded in making out such exceptional case as would warrant interference in the arbitral process. The impugned order neither suffers from such patent inherent lack of jurisdiction nor can be said to be so perverse as to stare in the face.

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11 1992 Mh.L.J. 836.

36. Thus, the Petition does not deserve to be entertained.

37. Hence the following order:

: O R D E R :

The Petition stands dismissed with costs.

[N. J. JAMADAR, J.]