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

COMM ARBITRATION APPLICATION (L) NO.23278 OF 2026
WITH
COMM ARBITRATION PETITION (L) NO.23009 OF 2026

Kiran Narendra Patkar ... Applicant

Vs.

1. Milan Narendra Patkar
2. Sujal Shantinath Mangudkar ... Respondents

Dr. Abhinav Chandrachud with Mr. Shubham Choudhari and Mr. Somnath Kale i/by Mr. Nikhil Adkine for the Applicant/Applicant.

Mr. Aloukik R. Pai for the Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 21, 2026.

PRONOUNCED ON : AUGUST 27, 2026

JUDGMENT:

1. By the present Application filed under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996, the Applicant seeks appointment of a Sole Arbitrator. The dispute arises from the Development Agreement dated 18 December 2024 executed between the Applicant, as Developer, and the Owners, including Respondent No.1. Under the said Agreement, full, exclusive and irrevocable development rights in respect of 'Patkar House' were given to the Applicant. It is the Applicant's case that, in breach of the restrictions contained in the Agreement, Respondent No.1 executed a Gift Deed dated 4 February 2026 in favour of Respondent No.2. According to the Applicant, this has seriously affected his redevelopment rights. The Applicant invoked the arbitration agreement by notice dated 15 June 2026. However, the Respondents did not agree to the appointment of the Sole Arbitrator nominated by the Applicant. Therefore, the present Application has been filed.

2. The facts and circumstances which, according to the Applicant, led to the filing of the present Application are as follows. A Development Agreement was executed on 18 December 2024 between the Applicant, as Developer, and the Owners, namely Late Mr. Narendra Dattaram Patkar and Respondent No.1. Under this Agreement, the Applicant was given full, exclusive and irrevocable rights to redevelop 'Patkar House'. The Owners handed over peaceful and vacant possession of the property to the Applicant for redevelopment. They agreed not to create any third-party rights in respect of the property. Mr. Narendra Dattaram Patkar died on 14 April 2025. According to the Applicant, after his death, all rights, title, interest, obligations and liabilities arising under the Development Agreement, including the arbitration agreement contained in Clause 22, continued against and became binding upon his estate and legal heirs. According to the Applicant, Respondent No.1 acted in clear breach of the restrictions contained in the Development Agreement by executing a Gift Deed dated 4 February 2026 in favour of Respondent No.2 in respect of the said property. In April 2026, Respondent No.2, claiming rights under the said Gift Deed, allegedly attempted to enter the property and interfere with the Applicant's possession, control and redevelopment rights. This conduct, according to the Applicant, resulted in serious disputes between the parties.

3. The Applicant, through his Advocate, issued a notice dated 15 June 2026 to the Respondents under Section 21 of the Arbitration and Conciliation Act, 1996. By the said notice, the Applicant invoked the arbitration agreement and called upon the Respondents to stop interfering with his rights. The Applicant nominated a former Judge of the Bombay High Court as the Sole Arbitrator. The Respondents received the notice and, through M/s. Pai & Associates, Advocates & Legal Consultants, sent their reply dated 18 June 2026. In the said reply, the Respondents disputed their knowledge of the Development Agreement and made allegations against the Applicant. However, they did not agree to the appointment of the Sole Arbitrator nominated by the Applicant. The Applicant has, therefore, approached this Court by filing the present Application under Section 11 of the Arbitration and Conciliation Act, 1996.

4. Dr. Chandrachud, learned Advocate for the Applicant, submits that the Respondents have only made a general allegation of fraud and forgery with the intention of preventing the dispute from being referred to arbitration. According to him, this allegation is not supported by the documents on record. He submits that recital C of the Gift Deed dated 4 February 2026 refers to the registered Will dated 11 April 2025 of Late Narendra Patkar. The said Will, according to the Applicant, refers to the Agreement under which ‘Patkar House’ was being redeveloped by the Applicant, Mr. Kiran Patkar. It is therefore submitted that the Respondents were aware of the Development Agreement. The Applicant contends that the allegations of fraud and forgery have been made only to defeat the rights of the son and to obstruct the redevelopment of ‘Patkar House’. According to the Applicant, this conduct of Respondent Nos.1 and 2 shows that their objections are not bona fide. The Applicant seeks permission to rely upon the Compilation of Documents already served upon the Respondents. The said Compilation includes the registered Will dated 11 April 2025 of Late Narendra Patkar. According to the Applicant, the Will records that both co-owners of ‘Patkar House’, namely Late Narendra Patkar and Respondent No.1, had executed the Development Agreement for redevelopment of the property. The Will refers to the consideration amount which was to be paid by the Applicant to the grandchildren, including the children of Respondent No.2. On the basis of these documents and submissions, the Applicant submits that the existence of the Development Agreement and the arbitration agreement is sufficiently shown and, therefore, a Sole Arbitrator ought to be appointed.

5. Mr. Pai, learned Advocate for the Respondents, relied upon the judgment in *Rajia Begum, 2026 SCC OnLine SC 135*. He submits that Respondent No.1 is asking this Court to first decide whether the arbitration agreement exists. According to Respondent No.1, the alleged arbitration agreement is contained in an unregistered and insufficiently stamped Development Agreement, which she and her late husband are alleged to have executed in favour of the Applicant, their son. Respondent No.1 has stated in paragraph 2 of her reply that the relations between the Applicant and his second wife on one side and Respondent No.1 and her late husband on the other side were extremely strained. Because of these differences, Respondent No.1 and her late husband were required to leave their residence and live in a one-bedroom flat at Mahim, even though they owned the Suit Building at Dadar. Respondent No.1 has denied that she or her late husband ever executed the alleged Development Agreement. According to her, the alleged Agreement would have given the development rights of their only substantial asset to their son, whom they did not trust. Respondent No.1 has further stated that in December 2024, when the alleged Development Agreement is said to have been executed, her late husband was about 90 years old, was frequently in hospital and had undergone removal of a portion of his foot to prevent the spread of gangrene. He was bedridden and had very limited mobility. He was not fluent in English, as he had studied only up to the 4th standard in a Marathi medium school. Therefore, according to Respondent No.1, it was not possible for him to give instructions, agree to the terms, or even understand the nature and effect of the alleged Development Agreement. Respondent No.1 further states that neither she nor her late husband signed the alleged Development Agreement. It is her case that the persons shown as witnesses to the Agreement, who are the mother and niece of the Applicant's second wife, never witnessed the execution and were not close to Respondent No.1.

6. Mr. Pai invited my attention to paragraph 15 of the judgment in Rajia Begum, which reads as follows:

> "15. Thus, it is evident that when an allegation of fraud is made with regard to arbitration agreement, such a dispute is generally recognised as a dispute, which is in the realm of non-arbitrability and the court will examine it, as a jurisdictional issue only to enquire whether the dispute has become non-arbitrable due to one or the other reason."

7. Mr. Pai relied upon the relevant portion of paragraph 20 of the said judgment, which reads as follows:

> "20. ....A party may be bound by the arbitral process only if it is first shown, even at a prima facie level, that such a party had agreed to submit disputes to arbitration. Where the arbitration agreement is alleged to be forged or fabricated, the disputes ceases to be merely contractual and strikes at the very root of arbitral jurisdiction. A controversy of this nature falls squarely within the category of disputes that are generally recognized as non-arbitrable."

8. Mr. Pai submits that the correspondence exchanged between the parties before filing the present Application shows that the alleged Development Agreement was never produced before the Respondents. According to him, despite asking for inspection of the alleged Agreement, no inspection was given to the Respondents. Therefore, the existence and execution of the alleged Development Agreement remain seriously disputed. In these circumstances, Mr. Pai submits that this Court must first hear and decide the objection regarding the existence of the arbitration agreement. According to him, such determination is necessary before any arbitral tribunal is constituted to decide disputes arising out of the alleged Development Agreement.

9. Mr. Pai therefore submits that Respondent No.1 may be permitted to place before this Court the circumstances surrounding the alleged execution of the Development Agreement. According to Respondent No.1, these circumstances show that the alleged arbitration agreement contained in the alleged Development Agreement is forged and fabricated. It is submitted that this conclusion is apparent even at the prima facie stage and, according to the Respondents, is evident from the material placed before the Court.

10. Mr. Pai further submits that Respondent No.2 has explained in paragraph 2 of her reply that the Applicant was aware of, but deliberately did not disclose, the Gift Deed dated 23 January 2024 bearing Registration No. BBE-5/1194/2024. Under this Gift Deed, Respondent No.1 and her late husband had allegedly gifted ownership rights in Shop No.1, admeasuring about 225 sq. ft., and Shop No.2, admeasuring about 225 sq. ft., situated on the ground floor of the building known as Patkar House. According to Respondent No.2, these shops form part of the property which the Applicant now seeks to redevelop under the alleged unregistered and insufficiently stamped Development Agreement dated 18 December 2024. Respondent No.2 adopts the objections raised by Respondent No.1 regarding the very existence of the alleged Development Agreement. She further objects to the disputes between herself and the Applicant being referred to arbitration on the ground that she is not a signatory to the alleged Agreement or arbitration agreement. Respondent No.2 claims independent ownership rights in Shop Nos.1 and 2. According to her, she therefore has an independent interest in those shops, and the redevelopment rights concerning the building in which the shops are situated could not have been given to the Applicant without her consent. It is therefore submitted that, to the extent the present Section 11 Application seeks to join Respondent No.2 and refer disputes concerning Shop Nos.1 and 2 to arbitration, such reference would fall outside the alleged arbitration agreement. According to Respondent No.2, the alleged Development Agreement was executed after the Gift Deed of 2024 and she cannot be treated as a person claiming through or under the parties to that Agreement. Therefore, the disputes concerning Shop Nos.1 and 2 in Patkar House cannot, according to her, be referred to arbitration under the alleged arbitration agreement. Mr. Pai relied upon the judgment of the Supreme Court in *Ajay Madhusudhan Patel, (2025) 2 SCC 147*. He submitted that paragraphs 76 to 82 of the said judgment explain the scope of the jurisdiction of a Court exercising powers under Section 11 where the existence of the arbitration agreement is disputed and where a person sought to be joined in arbitration is a non-signatory.

11. Mr. Pai submits that the present Section 11 Application does not disclose the Gift Deed of 2024 under which Respondent No.2 claims ownership in respect of Shop Nos.1 and 2. According to him, despite this Gift Deed, the Applicant seeks to refer all disputes against Respondent No.2 to arbitration. Since the independent claims of Respondent No.2 concerning Shop Nos.1 and 2 could not, according to the Respondents, have been referred to arbitration under the subsequent alleged Development Agreement, the disputes raised by the Applicant against Respondent No.2, at least to that extent, should not be referred to arbitration.

REASONS AND ANALYSIS:

12. I have considered the submissions made by Dr. Chandrachud, learned Advocate for the Applicant, and Mr. Pai, learned Advocate for the Respondents. I have considered the Development Agreement dated 18 December 2024, the documents relied upon by both sides, the registered Will dated 11 April 2025, the Gift Deeds relied upon by the Respondents and the correspondence exchanged between the parties. I have considered the principles laid down by the Supreme Court in *Rajia Begum*, and *Ajay Madhusudan Patel*.

13. The first question which arises is whether there is sufficient material to prima facie show that an arbitration agreement exists between the Applicant and Respondent No.1, so that an Arbitral Tribunal can be constituted. The second question is whether the allegations of forgery and fabrication made by Respondent No.1 are of such nature that this Court should finally decide them before the arbitration can proceed. The third question concerns Respondent No.2, who says that she has not signed the Development Agreement and claims independent rights in Shop Nos.1 and 2 under the earlier Gift Deed dated 23 January 2024.

14. The objection of Respondent No.1 cannot be ignored merely because the Applicant relies upon a document containing an arbitration clause. Respondent No.1 has denied execution of the Development Agreement. She has stated that her late husband could not have knowingly executed such document. According to her, in December 2024 he was about 90 years old and was suffering from serious health problems. He was bedridden and had undergone removal of a portion of his foot to prevent spread of gangrene. She has further stated that he had studied only up to the 4th standard in Marathi medium and was not fluent in English. According to her, therefore, he could not have understood the Development Agreement or agreed to its terms. She further states that neither she nor her late husband signed the document and that the persons shown as witnesses were not close to her and had not witnessed its execution.

15. These statements made by Respondent No.1 are material and cannot be brushed aside. A person cannot be required to go to arbitration merely because the other side produces a document containing an arbitration clause. The basic foundation of arbitration is consent. In this context, the following observation in paragraph 20 of *Rajia Begum* is important:

> "A party may be bound by the arbitral process only if it is first shown, even at a prima facie level, that such a party had agreed to submit disputes to arbitration. Where the arbitration agreement is alleged to be forged or fabricated, the disputes ceases to be merely contractual and strikes at the very root of arbitral jurisdiction. A controversy of this nature falls squarely within the category of disputes that are

generally recognized as non-arbitrable."

16. Therefore, this Court has to see whether there is sufficient prima facie material to show that Respondent No.1 had agreed to the arbitration clause. At this stage, it is not necessary to hold a full trial regarding the execution of the document, signatures, handwriting, the circumstances in which the document was signed or every surrounding document. But there must be some material from which the existence of the arbitration agreement can reasonably be seen.

17. On the material placed before me, such prima facie material is available. The Applicant relies upon the Development Agreement dated 18 December 2024. However, his case does not rest only upon this disputed document. He relies upon the registered Will dated 11 April 2025 of Late Narendra Patkar. According to the Applicant, the said Will records that both co-owners of Patkar House, namely Late Narendra Patkar and Respondent No.1, had entered into the Development Agreement for redevelopment of Patkar House. The Will refers to the consideration which was to be paid by the Applicant to the grandchildren, including the children of Respondent No.2. The Will is stated to have been executed after the Development Agreement. Therefore, it is a document which came into existence after the alleged execution of the Development Agreement and refers to the same transaction which Respondent No.1 now says never existed.

18. The Applicant has relied upon recital C of the Gift Deed dated 4 February 2026 executed by Respondent No.1 in favour of

Respondent No.2. Dr. Chandrachud submits that this recital refers to the registered Will dated 11 April 2025 and that the Will refers to the Development Agreement under which Patkar House was being redeveloped by the Applicant. According to the Applicant the later registered document contains a reference which supports the existence of the Development Agreement.

19. The Will and the subsequent Gift Deed are not documents which have been prepared by the Applicant only for filing the present Section 11 Application. They are documents which existed independently and which show that the Development Agreement was known and was referred to in subsequent transactions. Whether the Will was validly executed, whether its contents will ultimately prove execution of the Development Agreement and what value should be given to recital C of the Gift Deed are matters which can be considered at the appropriate stage. But at the Section 11 stage, these documents make it difficult to accept that there is no material at all showing the existence of the Development Agreement. I am unable to accept the submission that the entire case of the Applicant rests only upon the disputed Development Agreement.

20. The Respondents have relied upon the fact that inspection of the Development Agreement was not given to them before the present Application was filed. This circumstance has some relevance because Respondent No.1 disputes execution of the Agreement. However, merely because inspection was not given before the proceedings, it cannot by establish that the Development Agreement is forged. At the most, it shows that the issue requires proper examination. It cannot by result in a finding that there is no arbitration agreement when other material has been placed by the Applicant in support of its existence.

21. The decision in *Rajia Begum* does not mean that every allegation of forgery is sufficient to stop arbitration. The Supreme Court explained in paragraph 12 that a mere allegation of fraud simpliciter is not sufficient. The important question is whether the allegation affects the arbitration agreement and whether the material is such that the Court cannot even prima facie find that the concerned party had agreed to arbitrate. Paragraph 13 of *Rajia Begum* is relevant in this regard. The Supreme Court held that the first test is satisfied only where the arbitration clause or agreement cannot be said to exist in a clear case in which the Court finds that the party against whom breach is alleged cannot be said to have entered into the arbitration agreement.

22. In the present case, such a position is not established at this stage. Respondent No.1 has given reasons for denying execution of the Development Agreement. These reasons certainly require examination. The age and health of Late Narendra Patkar, his education, his alleged difficulty in understanding English, the alleged absence of signatures and the role of the alleged witnesses may become relevant when it is finally decided whether the Development Agreement was genuinely executed. But at present these are disputed facts. They are not facts which have been finally proved. Evidence would be required for deciding them.

23. The principles stated in *Ajay Madhusudan Patel* are therefore relevant. Paragraph 76.5 states that the inquiry under Section 11(6) is confined to the existence of the arbitration agreement and that objections which depend upon evidence should be left to the Arbitral Tribunal. The Supreme Court has stated:

> "Therefore, objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can “rule” on its own jurisdiction."

24. This principle applies to the objection of Respondent No.1. Her objection regarding execution of the Development Agreement substantially depends upon disputed facts and evidence. It cannot be finally decided only from the pleadings at the Section 11 stage.

25. The observations in paragraph 76.6 of Ajay Madhusudan Patel is relevant. The Supreme Court stated:

> "Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage."

26. If this Court were to finally examine the signatures of Respondent No.1 and her late husband, their physical condition, whether Late Narendra Patkar understood the document, who was present when it was signed and whether the witnesses witnessed the execution, the Court would practically conduct a trial at the

Section 11 stage. Such an exercise is not contemplated at this stage. At the same time, the decision in *Rajia Begum* has to be kept in mind. If the arbitration agreement is shown to be forged, the Court cannot send the parties to arbitration merely because a document containing an arbitration clause has been produced. Some balance has therefore to be maintained. The Court has to see whether there is a real prima facie arbitration agreement. At the same time, disputed evidence should not be finally decided unless the material shows that no such agreement could have existed. On considering the material as a whole, I am not satisfied that the present case falls within such an exceptional category.

27. The Applicant has produced the Development Agreement dated 18 December 2024. There is the registered Will dated 11 April 2025 which, according to the Applicant, refers to the Development Agreement and redevelopment of Patkar House. Thereafter, there is the Gift Deed dated 4 February 2026, recital C of which, according to the Applicant, refers to the said Will and therefore supports the existence of the transaction. The Respondents dispute the legal effect and evidentiary value of these documents. But their existence cannot be ignored. These circumstances provide prima facie material showing that the Applicant's case regarding the Development Agreement is not based only on an isolated disputed document. I therefore do not accept the submission of Respondent No.1 that this Court must first conduct a final inquiry and record a finding that the arbitration agreement is forged and fabricated. The allegation is serious. But a serious allegation by cannot be treated as proof. At this stage, the material shows a genuine dispute requiring adjudication. It does not establish that Respondent No.1 never entered into the arbitration agreement.

28. The submission based upon *Rajia Begum* succeeds only to a limited extent. I accept that where the arbitration agreement is alleged to be forged, the Court has to consider that objection as a jurisdictional issue. However, I do not accept that merely raising such an allegation requires rejection of the Section 11 Application. The real test is whether the material makes the non-existence of the arbitration agreement so clear that arbitration cannot be allowed to start. In the present case, that position is not reached.

29. The next objection is regarding the Gift Deed dated 23 January 2024 bearing Registration No. BBE-5/1194/2024. Respondent No.2 says that under this Gift Deed Respondent No.1 and her late husband had gifted Shop Nos.1 and 2 to her. It is submitted that this Gift Deed is earlier than the Development Agreement dated 18 December 2024. Therefore, according to Respondent No.2, she had an independent ownership interest in the said shops before the alleged Development Agreement was entered into. On this basis, she submits that redevelopment rights relating to those shops could not have been given to the Applicant without her consent.

30. If Respondent No.2 had acquired independent ownership rights in the shops before 18 December 2024, a question would arise whether Respondent No.1 and Late Narendra Patkar could thereafter give redevelopment rights concerning those shops to the

Applicant without her consent. But this is a question relating to title and the effect of the earlier Gift Deed. It is not necessary for this Court, in the present Section 11 proceedings, to finally decide these rights.

31. Respondent No.2 has submitted that she is not a signatory to the Development Agreement. Merely because the Applicant has joined Respondent No.2 in the Section 11 Application, she cannot be treated as a party to the arbitration agreement. There must be some basis for holding that she is bound by the arbitration agreement.

32. The Supreme Court in *Ajay Madhusudan Patel*, while referring to Cox & Kings, has stated in paragraph 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] 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."

33. In my view, this principle applies to Respondent No.2. Her objection cannot be finally decided merely by looking at the Development Agreement. She claims that she obtained rights in

Shop Nos.1 and 2 under an earlier registered Gift Deed. The Applicant disputes the effect of that document and claims redevelopment rights over Patkar House. Whether Respondent No.2 is bound by the arbitration clause, whether she can be treated as claiming through or under the parties to the Development Agreement, whether the disputes concerning the shops arise from the Development Agreement and what effect the earlier Gift Deed has upon the redevelopment rights are questions involving facts and legal issues. Such questions can properly be considered by the Arbitral Tribunal under Section 16. However, this does not mean that Respondent No.2 is bound to arbitrate every dispute merely because an arbitrator is appointed between the Applicant and Respondent No.1. If Respondent No.2 raises the objection, the Tribunal will have to consider whether she is bound by the arbitration agreement and, if not, to what extent any claim against her can be considered in arbitration. Appointment of the arbitrator cannot be treated as a final finding that every dispute against Respondent No.2 is arbitrable.

34. There is some substance in the submission that the Applicant had not disclosed the Gift Deed dated 23 January 2024 in the Section 11 Application. A person approaching the Court under Section 11 should place the material facts which have direct bearing upon whether the arbitration can proceed. If suppression is established, it may have consequences. But non-disclosure of the Gift Deed by does not destroy the arbitration agreement between the Applicant and Respondent No.1. The main relevance of that Gift Deed is to the rights claimed by Respondent No.2 and to the question whether she can be brought within the arbitral proceedings.

35. I have considered the submission of Respondent No.1 that the Development Agreement is unregistered and insufficiently stamped. This objection cannot be treated as conclusive against the existence of the arbitration agreement. At this stage, the question under Section 11 is whether an arbitration agreement exists. Whether the Development Agreement requires registration, whether it is properly stamped and what legal consequence follows from any such defect are separate questions. They cannot be used to convert the Section 11 proceedings into a complete inquiry regarding enforceability of every part of the Development Agreement.

36. The Applicant's case that possession of Patkar House was handed over for redevelopment and that the parties had agreed not to create third-party rights is a circumstance which cannot be completely ignored. Respondent No.1 says that the Development Agreement was never executed. Respondent No.2 claims rights under the earlier Gift Deed. These different stands show that there is a dispute between the parties. The fact that the dispute is serious does not make it unsuitable for arbitration when prima facie existence of an arbitration agreement is shown.

37. The invocation notice dated 15 June 2026 is relevant. By this notice, the Applicant invoked the arbitration agreement and nominated a former Judge of this Court as Sole Arbitrator. The Respondents replied on 18 June 2026 but did not agree to the nominated arbitrator. Therefore, the agreed mechanism for appointment of the arbitrator has not worked, assuming that the arbitration agreement is otherwise found to exist. This gives the occasion for exercise of jurisdiction under Section 11.

38. I find on the first issue that the Applicant has shown, on a prima facie basis, the existence of an arbitration agreement between the Applicant and Respondent No.1. The denial by Respondent No.1 raises a factual dispute. But the material before the Court does not make the non-existence of the arbitration agreement so clear that it can be rejected without evidence. In view of the principles stated in *Ajay Madhusudan Patel*, the disputed questions concerning execution and genuineness should not be finally decided by this Court at the Section 11 stage.

39. The overall position is that the Applicant has shown the necessary prima facie basis for appointment of a Sole Arbitrator. To refuse appointment only because the Respondents have alleged forgery would, in the facts of the present case, amount to deciding disputed factual issues at a stage when only a limited examination is required. At the same time, appointment of the arbitrator will not prevent the Respondents from raising before the Tribunal their objections regarding execution, forgery, validity, stamping, title, the effect of the earlier Gift Deed and the status of Respondent No.2 as a non-signatory. All these objections will remain open for consideration in accordance with law.

40. The conclusion is that the objection of Respondent No.1 regarding the existence of the arbitration agreement does not justify refusal to constitute the Arbitral Tribunal. The Applicant has shown sufficient prima facie material supporting the existence of the arbitration agreement. Questions which require evidence can be considered by the Arbitral Tribunal. So far as Respondent No.2 is concerned, no final finding is being recorded that she is bound by the arbitration agreement. Her status and the extent to which disputes against her can be referred to arbitration will be considered by the Arbitral Tribunal in accordance with law.

41. Accordingly, the Application under Section 11 is required to be allowed to the extent of appointment of a Sole Arbitrator for adjudication of the disputes arising between the Applicant and the parties who are bound by the arbitration agreement. This will be subject to the Tribunal considering, under Section 16 of the Arbitration and Conciliation Act, 1996, the objection of Respondent No.2 and the other objections relating to its jurisdiction. The observations made in this order are only for the limited purpose of the Section 11 proceedings. They shall not be treated as final findings regarding the allegations of forgery, the genuineness of the Development Agreement, the validity or effect of the Gift Deed dated 23 January 2024, or the title and redevelopment rights claimed by the parties.

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

(i) The Arbitration Application is allowed;

(ii) Mr. Ranjeev Carvalho, Advocate of this Court, Office Address:- 501, 502, Shanti Building, Banaji Street, Fort

Mumbai 400001 Email ID: renjeev.carvalho@gmail.com, is hereby appointed as the Sole Arbitrator to adjudicate the disputes arising between the Applicant and the Respondent No.1 out of or in connection with the Development Agreement dated 18 December 2024;

(iii) The learned Sole Arbitrator shall, before entering upon the merits of the disputes, be at liberty to consider and decide all objections raised by the Respondents concerning the existence, execution, genuineness, validity and enforceability of the Development Agreement and the arbitration agreement contained therein, in accordance with law;

(iv) The question whether Respondent No.2, being a non-signatory to the Development Agreement, is bound by the arbitration agreement and whether the disputes raised against Respondent No.2 are capable of being referred to arbitration, is left open. Respondent No.2 shall be at liberty to raise all such objections before the learned Sole Arbitrator, including the effect of the Gift Deed dated 23 January 2024 and her alleged independent rights in Shop Nos.1 and 2 of Patkar House;

(v) All questions relating to the alleged forgery or fabrication of the Development Agreement, the Gift Deed dated 23 January 2024, the registered Will dated 11 April 2025 and the rights of the parties are expressly kept open for consideration by the learned Sole Arbitrator in accordance with law;

(vi) It is clarified that the observations made in this order are confined to the limited examination required at the stage of Section 11 of the Arbitration and Conciliation Act, 1996 and shall not be treated as findings on the merits of the disputes;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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;

(xi) 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.

(xii) The learned Sole Arbitrator shall make the requisite disclosure under Section 12 of the Arbitration and Conciliation Act, 1996 before entering upon the reference;

(viii) The learned Sole Arbitrator shall endeavour to complete the arbitral proceedings within the period prescribed under the Arbitration and Conciliation Act, 1996;

(ix) The Application filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 is hereby converted into an application under Section 17 of the said Act, to be considered by the learned Arbitral Tribunal in accordance with law;

(x) The Arbitration Application is disposed of in the above terms.

(xi) There shall be no order as to costs.

43. At this stage, Mr. Pai, learned Advocate for the Respondents prayed for stay of this Judgment and Order. However, for the reasons recorded herein above, the request for stay stands rejected.

(AMIT BORKAR, J.)