



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF APRIL, 2026
BEFORE
THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO. 13436 OF 2026 (GM-RES)

BETWEEN:

1. M/S NEXT BUILDERS AND DEVELOPERS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE
NO.4-182A-22, P.H COMPLEX,
NEAR BADRIYA JUMMA MASJID,
MOODABIDRI,
MOODABIDRI TALUK - 574 227.
REP BY ITS PARTNERS NO. 2 TO 4
REGISTERED UNDER
PARTNERSHIP ACT, 1932
2. MR. MUHAMMED SHARIF
AGED ABOUT 68 YEARS,
S/O ABDUL KARIM
3. MR. AFTAB MOHAMMED SHARIF
AGED ABOUT 37 YEARS,
S/O MUHAMMED SHARIF
4. NAZMA YASHMEEN
AGED ABOUT 52 YEARS,
W/O MUHAMMED SHARIF

PETITIONER NO.2 TO 4 ARE
R/AT BAIT ABDUL KARIM,
MOHALLA, MOODABIDRI POST,
MOODABIDRI TALUK - 574 227.

PETITIONER NO.2 AND 4 ARE



REPRESENTED THROUGH THEIR
GPA HOLDER
PETITIONER NO.3

...PETITIONERS

(BY SRI. SACHIN B S, ADVOCATE)

AND:

1. BALKRISHNA SUVARNA YERMALA
S/O JINAPPA POOJARY
AGED 41 YEARS
R/AT DOOR NO.25-4-305.
JHENKAR BUILDING
2ND FLOOR, COCONUT GARDEN
KULASHEKAR POST,
MANGALORE - 575 005.
2. SURJIT KUMAR
ADVOCATE AND ARBITRATOR
OFFICE AT, 2ND FLOOR,
SHREE KRISHNA COMPLEX
MG ROAD, KODIALBAIL,
MANGALORE - 575 003.

...RESPONDENTS

(BY SRI. ASHWINI JOYSTON KUTINHA, ADVOCATE FOR R1-
(CP 8839/2026))

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, QUASHING THE NOTICE OF ENQUIRY ISSUED IN A.P. NO.1 OF 2026 AND ALL PROCEEDINGS INITIATED AGAINST THE PETITIONERS PURSUANT THERETO AS PER ANNEXURE-A AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The petitioners, in the captioned writ petition, are assailing the Notice of enquiry issued in A.P.No.1/2026 and also seeking quashing of the proceedings initiated against the petitioners.

2. Heard learned counsel appearing for the petitioners and learned counsel appearing for respondent No.1.

3. Notice to respondent No.2 is dispensed with.

4. The short point that arises for consideration before this Court is as to whether in a case where the very execution and existence of the underlying partnership agreement containing an arbitration clause is seriously disputed by one of the parties, the named Arbitrator therein can assume jurisdiction and proceed with the arbitral process at the instance of the opposite party.



5. Learned counsel for the petitioners would vehemently contend that the petitioners have not merely disputed the invocation of the arbitration clause, but have gone to the root of the matter by specifically denying the very execution of the partnership agreement itself. It is his submission that when the foundational document, from which the arbitration clause emanates, is under serious cloud and is alleged to be *non est* in the eye of law, the arbitration clause embedded therein cannot be pressed into service in a unilateral manner.

6. *Per-contra*, the respondents seek to justify initiation of arbitral proceedings on the premise that the agreement contains a clause naming an Arbitrator and that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (for short 'Act, 1996') has been issued.

7. This Court, on a careful consideration of the rival submissions and on perusal of the material on record, is of



the considered view that the very edifice of the arbitral process in the present case is rendered disputed in view of the categorical and substantive challenge to the execution of the partnership agreement itself. When the existence of the agreement is not admitted and is, in fact, seriously disputed, the arbitration clause contained therein cannot be treated as an admitted or undisputed covenant so as to enable one of the parties to unilaterally trigger the arbitral mechanism or to call upon the named Arbitrator to enter upon reference.

8. It is a settled principle of law that in cases where the very existence or validity of the arbitration agreement is in dispute, the appropriate recourse available to the party seeking arbitration is to invoke the jurisdiction of the competent Court under Section 11 of the Act, 1996. The power under Section 11 of the Act, 1996 is specifically designed to address such preliminary issues, including the existence of a valid arbitration agreement. Therefore, any unilateral attempt to appoint or activate an Arbitrator,



even if named in the disputed agreement, would be legally unsustainable.

9. In the present case, the respondents, instead of invoking Section 11 of the Act, 1996 and seeking a judicial determination on the existence and validity of the arbitration agreement, have proceeded to initiate arbitral proceedings unilaterally. Such a course of action, in the teeth of a serious dispute regarding the very agreement, cannot be countenanced. The contention that the parties ought to mutually agree for appointment pales into insignificance in the factual matrix of the present case, where the foundational document itself is under challenge. The only permissible course open to the respondents is to approach the competent Court under Section 11 of the Act, 1996.

10. In that view of the matter, this Court is of the considered opinion that the impugned notice and all



consequential proceedings initiated on the basis of the disputed agreement are liable to be interfered with.

11. For the foregoing reasons, this Court proceeds to pass the following;

ORDER

(i) The writ petition is allowed.

(ii) The Notice of Enquiry issued in A.P.No.1/2026 and all proceedings initiated against the petitioners pursuant thereto, as per Annexure-A, are hereby quashed.

(iii) Liberty is reserved to the respondents to avail appropriate remedy in accordance with law, including by invoking Section 11 of the Arbitration and Conciliation Act, 1996.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**